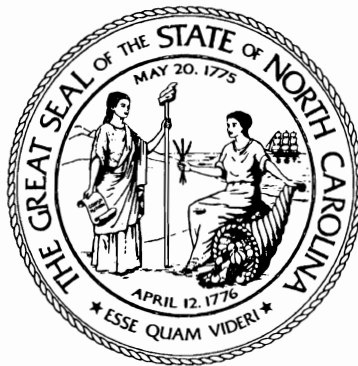


**HOUSE SELECT  
COMMITTEE ON ETHICS AND  
GOVERNMENTAL REFORM**



**FINAL REPORT  
TO THE NORTH CAROLINA  
HOUSE OF REPRESENTATIVES**

**May 8, 2006**

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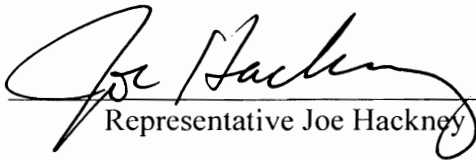
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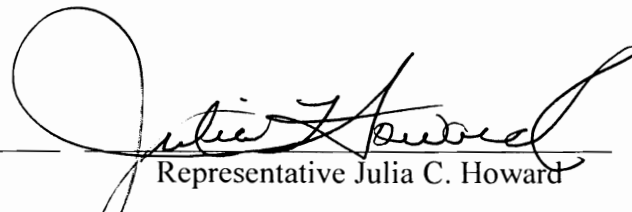
May 8, 2006

TO THE MEMBERS OF THE 2005-2006 HOUSE OF REPRESENTATIVES

The House Select Committee on Ethics and Governmental Reform respectfully submits for your consideration the following final report.

Respectfully submitted,

  
Representative Joe Hackney

  
Representative Julia C. Howard

Co-Chairs  
House Select Committee on Ethics and Governmental Reform

## **MEMBERSHIP**

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### **HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM 2006**

#### **Co-Chairs**

Representative Joe Hackney, Co-Chair

Representative Julia C. Howard, Co-Chair

#### **Subcommittee on Legislative & Executive Ethics Rep. Harold J. Brubaker, Rep. Paul Luebke, Co-chairs**

Representative Beverly M. Earle

Representative Edd Nye

Representative Susan C. Fisher

Representative Mitchell S. Setzer

Representative Carolyn H. Justice (East)

#### **Subcommittee on Campaign Finance/Reporting & Election Laws Rep. Rick L. Eddins, Rep. Deborah K. Ross, Co-Chairs**

Representative Jeffrey L. Barnhart

Representative Marian McLawhorn

Representative Larry M. Bell

Representative Thomas Roger West

Representative Pricey Harrison

#### **Subcommittee on Legislative & Executive Lobbying Reform Rep. Pryor Gibson, Rep. Wilma M. Sherrill, Co-Chairs**

Representative Lorene T. Coates

Representative John I. Sauls

Representative Marvin W. Lucas

Representative Fred F. Steen, II

Representative Grier Martin



Office of the Speaker  
North Carolina House of Representatives  
Raleigh, North Carolina 27601-1096

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**HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM**

Revised 2/20/06

**TO THE HONORABLE MEMBERS OF THE  
NORTH CAROLINA HOUSE OF REPRESENTATIVES**

**Section 1.** The House Select Committee on Ethics and Governmental Reform is established by the Speaker, effective December 5, 2005, as a select committee of the House pursuant to G.S. 120-19.6(a) and Rule 26(a) of the Rules of the House of Representatives of the 2005 General Assembly.

**Section 2.** The Select Committee consists of 23 members. The individuals listed below are appointed as members of the Select Committee. Members serve at the pleasure of the Speaker of the House of Representatives.

Representative Joe Hackney, Co-Chair	Representative Marvin W. Lucas
Representative Julia C. Howard, Co-Chair	Representative Marian N. McLawhorn
Representative Jeff Barnhart	Representative Paul Luebke
Representative Larry M. Bell	Representative Grier Martin
Representative Harold J. Brubaker	Representative Edd Nye
Representative Lorene Coates	Representative Deborah K. Ross
Representative Beverly M. Earle	Representative John Sauls
Representative Rick L. Eddins	Representative Mitchell S. Setzer
Representative Susan C. Fisher	Representative Wilma M. Sherrill
Representative Pryor Gibson	Representative Fred F. Steen
Representative Pricey Harrison	Representative Roger West
Representative Carolyn H. Justice	

**Section 3.** The Select Committee may meet during the interim period between regular sessions upon the call of its chair.

**Section 8.** The expenses of the Select Committee are considered expenses incurred for the operation of the House of Representatives and shall be paid pursuant to G.S. 120-35 from funds available to the House for its operations. Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of a co-chair of the Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speaker of the House of Representatives.

A handwritten signature in black ink, appearing to read "James B. Black", written in a cursive style.

---

James B. Black  
Speaker

Revised 2/20/2006 to reflect an expanded charge to the Select Committee.

## **COMMITTEE PROCEEDINGS**

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The full House Select Committee on Ethics and Governmental Reform met six times between January and May of 2006. In addition, the co-chairs appointed three subcommittees which met a total of nine times as follows. The Subcommittee on Legislative & Executive Ethics met one time on March 8, 2006. The Subcommittee on Campaign Finance/Reporting & Election Laws met five times between March 7, 2006 and May 8, 2006. The Subcommittee on Legislative & Executive Lobbying Reform met three times between April 25, 2006 and May 8, 2006.

Below is a compilation of all full Committee and Subcommittee meetings listed in chronological order.

### **January 6, 2006**

On January 6, 2006, the full Committee met to review its duties and responsibilities under its authorization. Committee Co-Counsel, O. Walker Reagan, presented an overview and summary of North Carolina's ethics laws. In particular, he discussed how ethical issues are handled in each branch of government.

Jane F. Finch, Vice-Chair of the North Carolina State Ethics Board, and Perry Newson, Executive Director of the North Carolina State Ethics Board, made presentations on executive branch ethics in North Carolina. They explained the scope of Executive Order No. One and described the functions of the North Carolina State Ethics Board including: (1) reviewing statements of economic interest of covered officials, (2) rendering advisory ethics opinions, (3) conducting ethics complaint investigations, and (4) conducting ethics education programs.

Walker Reagan explained legal deficiencies of the Executive Order process and presented information on other states' laws for executive branch ethics.

Elizabeth McKay, a Special Deputy Attorney General in the Transportation Section of the Attorney General's Office, highlighted special statutory ethics provisions unique to the North Carolina Department of Transportation.

### **February 9, 2006**

The second meeting of the full Committee was held on February 9, 2006. Erika Churchill, Committee Co-Counsel, presented a summary and overview of North Carolina's lobbying law. She compared the current lobbying law to changes scheduled to become effective January 1, 2007, as a result of legislation enacted during the 2005 Regular Session of the General Assembly (S.L. 2005-456, SB 612).

Elaine Marshall, Secretary of State, Haley Montgomery, Deputy Secretary of State, and Judge Robert Farmer, Consultant to the Secretary of State's Office, discussed implementation of lobbying law changes.

The Subcommittee directed staff to prepare a Legislative Ethics Act draft that would incorporate some of the same policies that were recommended in the Executive Branch Ethics Act draft.

Bob Phillips, Executive Director of Common Cause North Carolina, presented information on the West Virginia Ethics Commission. He urged the Subcommittee to consider the establishment of an independent ethics commission that is composed of citizens, not lawmakers or public officials, that would be responsible for both executive branch and legislative branch ethics.

### **March 23, 2006**

The Subcommittee on Campaign Finance/Reporting & Election Laws held its second meeting on March 23, 2006. The purpose of the meeting was to learn about public financing of campaigns. Robert Joyce, professor at the UNC School of Government, discussed current public financing initiatives in North Carolina. Erika Churchill, Committee Co-Counsel, described introduced legislation about public financing. Bill Gilkeson, Committee Co-Counsel, presented research on public financing of campaigns in other states.

The Subcommittee held a public hearing and heard from the following people: Judge Wanda Bryant, North Carolina Court of Appeals, Beth Messersmith, volunteer board President of North Carolina Voters for Clean Elections, Heather Yandow, a board member of Democracy North Carolina, Peg Chapin, Campaign Finance and Election Reform Chair for the League of Women Voters, Chris Heagarty, North Carolina Center for Voter Education, and Don Hyatt, Former Candidate for Cary Town Council.

### **March 24, 2006**

The fourth meeting of the full Committee was held on March 24, 2006. Roth Judd, Director of the Wisconsin State Ethics Board, discussed Wisconsin's gift restrictions from lobbyists to legislators and its "no cup of coffee" gift ban law. Wisconsin is one of three states that prohibit lobbyists from giving anything of value to legislators.

Representative Pryor Gibson explained that the Subcommittee on Legislative & Executive Lobbying Reform wanted to hear from all interested parties on the subject of legislative and executive lobbying reform in order to have a bill draft prior to the Subcommittee's first meeting.

Representative Deborah Ross noted that the Subcommittee on Campaign Finance/Reporting & Election Laws met twice and discussed six major issues. She explained that the Subcommittee considered bill drafts on the following topics: (1) the restricted uses of leftover campaign funds, (2) the prohibition of blank contribution checks, and (3) lowering from \$100 to \$50 the threshold reporting requirement for individual contributions.

Representative Ross stated that the Subcommittee also discussed (1) public financing of campaigns, (2) a comparison of other states' campaign contribution limits, and (3) the idea of clarifying the definition of "independent expenditure" in the North Carolina General Statutes.



\$100 to \$50 the threshold reporting requirement for individual contributions. He presented research that compared North Carolina's contribution limits with the contribution limits of other states.

Gina M. Winters, Associate Research Analyst for the New Jersey Legislature, spoke to the Subcommittee and described New Jersey's pilot program which allows public financing of some legislative campaigns.

Linda Millsaps, Fiscal Analyst with the Fiscal Research Division, presented her analysis of the Arizona checkoff if it was applied in North Carolina. The Arizona checkoff program allows taxpayers to designate a contribution to a fund which is used for public financing of political campaigns.

#### **April 25, 2006**

The Subcommittee on Legislative & Executive Lobbying Reform met for the first time on April 25, 2006. It discussed the idea of banning gifts from lobbyists to legislators. The Subcommittee discussed what does and does not constitute a gift. After this discussion, the Subcommittee decided to recommend a "no gifts rule" to the full Committee.

The Subcommittee also examined issues related to SB 612, the lobbying law enacted last session. Walker Reagan and Erika Churchill, Committee Co-Counsels, explained provisions of the law and passed out informational documents.

#### **April 27, 2006**

The Subcommittee on Campaign Finance/Reporting & Election Laws met for the fourth time on April 27, 2006. Erika Churchill, Committee Co-Counsel, explained what a 527 organization is and described North Carolina's laws on electioneering communications. Bill Gilkeson, Committee Co-Counsel, presented a history of North Carolina's issue-advocacy laws from 1974 to the present. Winnie Strzelecki, Field Director for the Reform Institute, presented additional information on 527's in other states and at the federal level.

The Subcommittee voted to make recommendations for a pilot program allowing the public financing of selected legislative elections. The program would have components from the current judicial program such as: (1) thresholds high enough to demonstrate the candidate's viability and voters' authorization before public funds are spent, (2) voluntary spending and fundraising requirements, and (3) rescue funds to help a qualified candidate stay competitive in the face of high-spending opposition.

The Subcommittee also recommended further inquiry into federal law and other states' actions related to reporting and regulation of electioneering communications and issue advocacy.

#### **April 28, 2006**

The Subcommittee on Legislative & Executive Lobbying Reform met a second time on April 28, 2006. It discussed the idea of limiting or preventing lobbyists from donating to candidates running for office in legislative or executive branch races. The Subcommittee acknowledged its desire to make this recommendation to the full Committee as long as the proposal was constitutional.

The Subcommittee recommended sending these bills to the full Committee for consideration during the full Committee's meeting later in the day on May 8, 2006.

\*\*\*

The Subcommittee on Legislative & Executive Lobbying Reform met a third time on May 8, 2006. Erika Churchill, Committee Co-Counsel, presented the Lobbying Reform 2006 bill draft. She explained that the bill would clarify and strengthen additional areas of lobbying regulation, including banning certain gifts from lobbyists to covered persons.

The Subcommittee recommended sending the bill to the full Committee for consideration during the full Committee's meeting later in the day on May 8, 2006.

\*\*\*

The sixth meeting of the full Committee was held on May 8, 2006.

The Subcommittee on Legislative & Executive Ethics made its recommendations to the full Committee.

Walker Reagan, Committee Co-Counsel, presented the Revise Legislative Ethics Act bill draft. Mr. Reagan explained that the draft differs from previous versions because it gives a better definition of a "public event" and conforms the rules applied to legislators to the rules applied to members of the judicial and executive branches. Mr. Reagan noted that the draft allows legislative titles in political advertising, but prohibits them in commercial advertising. Mr. Reagan also explained that the draft would limit legislative staff from accepting honoraria in situations such as speaking engagements. The full Committee recommended sending this bill to the North Carolina General Assembly for adoption.

Mr. Reagan also presented the Executive Branch Ethics Act bill draft. He explained that the changes in this draft mirror the alterations made to the Revise Legislative Ethics Act. The full Committee recommended sending this bill to the North Carolina General Assembly for adoption.

The Subcommittee on Campaign Finance/Reporting & Election Laws made recommendations to the full Committee.

Erika Churchill, Committee Co-Counsel, presented the Treasurer Training bill draft. She explained that the draft would require all treasurers of political committees to participate in training within three months of appointment and at least once every four years thereafter. The full Committee recommended sending this bill to the North Carolina General Assembly for adoption.

Ms. Churchill presented the Strengthen Electioneering Communications bill draft. She explained that the primary function of the bill is to decrease the disclosure requirement to mass communications reaching at or above 2,500 persons. The full Committee recommended sending this bill to the North Carolina General Assembly for adoption.

## RECOMMENDATIONS

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The Committee recommends that the General Assembly enact the following proposed legislation:

### **Recommendation 1:**

“AN ACT TO ESTABLISH THE EXECUTIVE BRANCH ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, AND TO MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.”

**FINDING:** Although the Governor has issued Executive Order No. One to address Executive Branch Ethics, there is no comprehensive ethics law for the Executive Branch. After examining the appropriateness of the scope of the State Board of Ethics as set forth in Executive Order No. One, the Committee finds that the General Assembly should codify the provisions of Executive Order No. One and provide by statute: (1) the ability to prosecute those who knowingly make false or misleading statements on statements of economic interest, (2) investigative authority, including subpoena power, (3) coverage for Council of State Members and their appointees and appointees to boards and commissions made by the Speaker of the House of Representatives or the President Pro Tempore of the Senate, (4) better enforcement options for ethics violations, (5) required submission, under oath, of written statements of economic interest for appointees to executive boards and commissions before these individuals take office, (6) implementation of a gift ban that prohibits public servants from accepting gifts, and (7) required ethics training.

### **Recommendation 2:**

“AN ACT TO REVISE THE LEGISLATIVE ETHICS ACT AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENT REFORM.”

**FINDING:** North Carolina should revise its Legislative Ethics Act. After reviewing the economic interest disclosure requirements for legislators, the Committee finds the public would be well served if these disclosures were more comprehensive and the means by which this information is made available to the public was improved. Ethical standards applicable to public officials in the Executive Branch generally should apply to the Legislative Branch. The Committee also recognizes the need to impose criminal sanctions for willfully providing false information or intentionally hiding information on a statement of economic interest. Required ethics training for legislators and staff is an essential element in revising the Legislative Ethics Act, and the Legislative Ethics Committee should be given greater authority to advise on and enforce high ethical standards. Finally, the Legislative Ethics Act should implement a gift ban that prohibits legislators from accepting gifts from lobbyists.

#### **Recommendation 6:**

"AN ACT TO STRENGTHEN POLITICAL COMMITTEE TREASURER TRAINING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM."

**FINDING:** Under current law, campaign treasurers are not required to receive any training. This lack of training has led to misunderstandings regarding what is and is not permissible under North Carolina's campaign finance and election laws. Required training for treasurers of political campaign committees would reduce mistakes, add clarity and transparency to North Carolina's campaign finance and election laws, and foster public trust in the system.

#### **Recommendation 7:**

"AN ACT TO PROHIBIT THE USE OF BLANK CHECKS AS CAMPAIGN CONTRIBUTIONS AND TO DELINEATE WHAT IS LAWFUL AND UNLAWFUL PARTICIPATION BY AN INTERMEDIARY IN POLITICAL FUNDRAISING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM."

**FINDING:** Currently, North Carolina campaign finance laws do not address "bundling," an apparently common practice in which an intermediary gathers up contribution checks from individuals and delivers them all together to a candidate or committee. The State Board of Elections has given the opinion that the practice is not illegal as long as the check is completed. Recently, it has been debated whether bundling is legal even if the intermediary completes a contribution check that the contributor has left blank. North Carolina should prohibit the use of blank payee checks to contribute to candidates.

#### **Recommendation 8:**

"AN ACT TO STRENGTHEN REGULATION OF ELECTIONEERING COMMUNICATIONS IN NORTH CAROLINA, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM."

**FINDING:** North Carolina's law addressing electioneering communications is inadequate and should be strengthened. To improve its law, North Carolina should (1) reduce from 7,500 and 5,000 to 2,500 the number of persons in the definition of "targeted to the relevant electorate," (2) clarify that any individual, committee, association, or other organization or group of individuals can produce an electioneering communication even if they have taken a contribution from a prohibited source by segregating the funds to prove that the electioneering communication was produced with only the allowable source's contributions, and (3) clarify that the trigger for disclosure dates is the time at which the obligation is incurred, not when the disbursement for the debt owed is made. These changes would strengthen North Carolina's campaign finance and election laws.

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AN ACT TO ESTABLISH THE EXECUTIVE BRANCH ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, AND TO MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

**SECTION 1.** The General Statutes are amended by adding a new Chapter to read:

**"Executive Branch Ethics Act.**

"General Provisions.

This Chapter shall be known and may be cited as the 'Executive Branch Ethics Act.'

The people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest. To maintain the public trust it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence. Elected and appointed officials must maintain and exercise the highest standards of duty to the public in carrying out the responsibilities and functions of their positions. Acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest, and this power cannot be used to advance narrow interests for oneself, other persons, or groups. Self-interest, partiality, and prejudice have no place in decision-making for the public. Public officials must exercise their duties responsibly with skillful judgment and energetic dedication. Public officials must exercise discretion with sensitive information pertaining to public and private persons and activities. To maintain the integrity of North Carolina's State government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect. Because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflict will occur. Often these conflicts are unintentional and slight, but at every turn those public officials who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where even the appearance of a conflict of interest exists. The State is committed to the responsible exercise of authority by persons of honor and goodwill in government, by

- commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State.
- (10) Extended family. – Spouse, descendant, ascendant, or sibling of the public servant or descendant, ascendant, or sibling of the spouse of the public servant.
- (11) Immediate family. – An unemancipated child of the public servant residing in the household and the public servant's spouse, if not legally separated.
- (12) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.
- (13) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.
- (14) Pecuniary interest. – Any of the following:
- a. Owning, either individually or collectively, a legal, equitable, or beneficial interest of ten thousand dollars (\$10,000) or more or five percent (5%), whichever is less, of any business.
  - b. Receiving, either individually or collectively, during the preceding calendar year compensation that is or will be required to be included as taxable income on federal income tax returns of the public servant, the public servant's immediate family, or a business with which associated in an aggregate amount of five thousand dollars (\$5,000) from any business or combination of businesses. A pecuniary interest exists in any client or customer who pays fees or commissions, either individually or collectively, of five thousand dollars (\$5,000) or more in the preceding 12 months to the public servant, the public servant's immediate family, or a business with which associated.
  - c. Receiving, either individually or collectively and directly or indirectly, in the preceding 12 months, gifts or honoraria having an unknown value or having an aggregate value of five hundred dollars (\$500.00) or more from any person. A pecuniary interest does not exist under this sub-subdivision by reason of (i) a gift or bequest received as the result of the death of the donor; (ii) a gift from an extended family member; or (iii) acting as a trustee of a trust for the benefit of another.
  - d. Holding the position of associate, director, officer, business associate, or proprietor of any business, irrespective of the amount of compensation received.
- (15) Public event. – An organized gathering of individuals open to the general public or to which at least ten public servants are invited to

1           a widely held investment fund, including a mutual fund, regulated  
2           investment company, or pension or deferred compensation plan, if:

3           a.     The public servant or a member of the public servant's  
4           immediate family neither exercises nor has the ability to  
5           exercise control over the financial interests held by the fund;  
6           and

7           b.     The fund is publicly traded, or the fund's assets are widely  
8           diversified.

9           **"§ 138A-4 and 138A-5. [Reserved]"**

10                           "Article 2.

11                                   "Ethical Standards for Public Servants.

12           **"§ 138A-6. Use of public position for private gain.**

13           (a)     A public servant shall not knowingly use the public servant's public position  
14           in any manner that will result in financial benefit, direct or indirect, to the public  
15           servant, a member of the public servant's extended family, or a person with whom, or  
16           business with which, the public servant is associated. The performance of usual and  
17           customary duties associated with the public position or the advancement of public  
18           policy goals or constituent services, without compensation, shall not constitute the use  
19           of public position for financial benefit. This subsection shall not apply to financial or  
20           other benefits derived by a public servant that the public servant would enjoy to an  
21           extent no greater than that which other citizens of the State would or could enjoy, or that  
22           are so remote, tenuous, insignificant, or speculative that a reasonable person would  
23           conclude under the circumstances that the public servant's ability to protect the public  
24           interest and perform the public servant's official duties would not be compromised.

25           (b)     A public servant shall not mention or permit another person to mention the  
26           public servant's public position in nongovernmental advertising that advances the  
27           private interest of the public servant or others. The prohibition in this subsection shall  
28           not apply to political advertising, news stories, or news articles.

29           **"§ 138A-7. Gifts.**

30           (a)     A public servant shall not knowingly, directly or indirectly, ask, accept,  
31           demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the  
32           public servant, or for another person, in return for being influenced in the discharge of  
33           the public servant's official responsibilities, other than that which is received by the  
34           public servant from the State for acting in the public servant's official capacity.

35           (b)     A public servant may not solicit for a charitable purpose any gift from any  
36           other public servant whose position is subordinate to the soliciting public servant. This  
37           subsection shall not apply to solicitations for the State Employees Combined Campaign  
38           or to other charities for which payroll deductions are authorized under G.S. 143-3.3(i)  
39           and (j).

40           (c)     No public servant shall knowingly accept anything of monetary value,  
41           directly or indirectly, from a legislative lobbyist or principal as defined in G.S. 120-47.1  
42           or an executive lobbyist or principal as defined in G.S. 147-54.31, or a person whom the  
43           public servant knows or has reason to know any of the following:



1           (16) Things of monetary value given to a public servant valued in excess of  
2           ten dollars (\$10.00) where the thing of monetary value is entertainment  
3           or related expenses associated with the public business of industry  
4           recruitment, promotion of international trade, or the promotion of  
5           travel and tourism, and the public servant is responsible for conducting  
6           the business on behalf of the State, provided all the following  
7           conditions apply:

8           a. The public servant did not solicit the thing of value, and the  
9           public servant did not accept the thing of value in the  
10           performance of the public servant's official duties.

11           b. The public servant reports electronically to the Commission  
12           within 30 days of receipt of the thing of value. The report shall  
13           include a description and value of the thing of value and a  
14           description how the thing of value contributed to the public  
15           business of industry recruitment, promotion of international  
16           trade, or the promotion of travel and tourism. This report shall  
17           be posted to the Commission's public Web site.

18           c. A tangible thing of value in excess of ten dollars (\$10.00), other  
19           than meals or beverages, shall be turned over as State property  
20           to the Department of Commerce within 30 days of receipt.

21           (17) Things of monetary value of personal property valued at less than one  
22           hundred dollars (\$100.00) given to a public servant in the commission  
23           of the public servant's official duties if the gift is given to the public  
24           servant as a personal gift in another country as part of an overseas  
25           trade mission, and the giving and receiving of such personal gifts is  
26           considered a customary protocol in the other country.

27           (e) A prohibited gift shall be declined, returned, paid for at fair market value, or  
28           accepted and donated immediately to the State. Perishable food items of reasonable  
29           costs, received as gifts shall be donated to charity, destroyed, or provided for  
30           consumption among the entire staff or the public.

31           (f) A public servant shall not accept an honorarium from a source other than the  
32           employing entity for conducting any activity where any of the following apply:

33           (1) The employing entity reimburses the public servant for travel,  
34           subsistence, and registration expenses.

35           (2) The employing entity's work time or resources are used.

36           (3) The activity would be considered official duty or would bear a  
37           reasonably close relationship to the public servant's official duties.

38           An outside source may reimburse the employing entity for actual expenses incurred by a  
39           public servant in conducting an activity within the duties of the public servant, or may  
40           pay a fee to the employing entity, in lieu of an honorarium, for the services of the public  
41           servant.

42           (g) Acceptance or solicitation of a thing of value in compliance with this section  
43           without corrupt intent shall not constitute a violation of G.S. 14-217 or G.S. 14-218.

44           "§ 138A-8. Other compensation.



1       (b) A public servant described in subsection (a) of this section shall abstain from  
2 participation in the official action. The public servant shall submit in writing to the  
3 employing entity the reasons for the abstention. When the employing entity is a board,  
4 the abstention shall be recorded in the employing entity's minutes.

5       (c) A public servant shall take reasonable and appropriate steps, under the  
6 particular circumstances and considering the type of proceeding involved, to remove  
7 himself or herself, to the extent necessary to protect the public interest and comply with  
8 this Chapter, from any proceeding in which the public servant's impartiality might  
9 reasonably be questioned due to the public servant's familial, personal, or financial  
10 relationship with a participant in the proceeding. A participant includes (i) an owner,  
11 shareholder, business associate, employee, agent, officer, or director of a business,  
12 organization, or group involved in the proceeding, or (ii) an organization or group that  
13 has petitioned for rulemaking or has some specific, unique, and substantial interest in  
14 the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative  
15 proceedings. A personal relationship includes one in a leadership or policy-making  
16 position in a business, organization, or group.

17       (d) If a public servant is uncertain whether the relationship described in  
18 subsection (c) of this section justifies removing the public servant from the proceeding  
19 under subsection (c) of this section, the public servant shall disclose the relationship to  
20 the person presiding over the proceeding and seek appropriate guidance. The presiding  
21 officer, in consultation with legal counsel if necessary, shall then determine the extent to  
22 which the public servant will be permitted to participate. If the affected public servant is  
23 the person presiding, then the vice-chair or any other substitute presiding officer shall  
24 make the determination. A good-faith determination under this subsection of the  
25 allowable degree of participation by a public servant is presumptively valid and only  
26 subject to review under G.S. 138A-25 upon a clear and convincing showing of mistake,  
27 fraud, abuse of discretion, or willful disregard of this Chapter.

28       (e) Notwithstanding subsections (a) and (c) of this section, a public servant may  
29 participate in an official action under any of the following circumstances:

30       (1) The only pecuniary interest or reasonably foreseeable benefit that  
31 accrues to the public servant, the public servant's extended family, or  
32 business with which the public servant is associated as a member of a  
33 profession, occupation, or large class, is no greater than that which  
34 could reasonably be foreseen to accrue to all members of that  
35 profession, occupation, or large class.

36       (2) Where an official action affects or would affect the public servant's  
37 compensation and allowances as a public servant.

38       (3) Before the public servant participated in the official action, the public  
39 servant requested and received from the Commission a written  
40 advisory opinion that authorized the participation.

41       (4) Before participating in an official action, a public servant made full  
42 written disclosure to the public servant's employing entity which then  
43 made a written determination that the interest or benefit would neither  
44 impair the public servant's independence of judgment nor influence the

1 four-year terms, beginning January 1, 2007, except for the initial terms that shall be as  
2 follows:

3 (1) One member shall serve an initial term of one year.

4 (2) Two members shall serve initial terms of two years.

5 (3) Two members shall serve initial terms of three years.

6 (4) Two members shall serve initial terms of four years.

7 (b) Members shall be removed from the Commission only for misfeasance,  
8 malfeasance, or nonfeasance as determined by the Governor.

9 (c) The Governor shall fill any vacancies in appointments for the remainder of  
10 any unfulfilled term.

11 (d) No member while serving on the Commission or employee while employed  
12 by the Commission shall:

13 (1) Hold or be a candidate for any other office or place of trust or profit  
14 under the United States, the State, or a political subdivision of the  
15 State.

16 (2) Hold office in any political party.

17 (3) Participate in or contribute to the political campaign of any public  
18 servant or any candidate for a public office as a public servant over  
19 which the Commission would have jurisdiction or authority.

20 (4) Otherwise be an employee of the State, a community college, or a  
21 local school system, or serve as a member of any other State board.

22 (e) The Commission shall elect a chair and vice-chair annually. The vice-chair  
23 shall act as the chair in the chair's absence or if there is a vacancy in that position.

24 (f) Members of the Commission shall receive no compensation for service on the  
25 Commission but shall be reimbursed for subsistence, travel, and convention registration  
26 fees as provided under G.S. 138-5, 138-6, or 138-7, as applicable.

27 **"§ 138A-22. Meetings and quorum.**

28 The Commission shall meet at least quarterly and at other times as called by its  
29 chair; in the case of a vacancy in the chair, by the vice-chair; or by four of its members.  
30 Four members of the Commission constitute a quorum.

31 **"§ 138A-23. Staff and offices.**

32 The Commission may employ professional and clerical staff, including an executive  
33 director. The Commission shall be located within the Department of Administration for  
34 administrative purposes only, but shall exercise all of its powers, including the power to  
35 employ, direct, and supervise all personnel, independently of the Secretary of  
36 Administration, and is subject to the direction and supervision of the Secretary of  
37 Administration only with respect to the management functions of coordinating and  
38 reporting.

39 **"§ 138A-24. Powers and duties.**

40 In addition to other powers and duties specified in this Chapter, the Commission  
41 shall:

42 (1) Provide reasonable assistance to public servants in complying with this  
43 Chapter.

individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) Except as provided in subsection (c) of this section, a complaint filed under this Chapter must be filed within one year of the date the complainant knew or should have known of the conduct upon which the complaint is based.

(3) The Commission may decline to accept or investigate any attempted complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(4) In addition to subdivision (3) of this subsection, the Commission may decline to accept or investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint investigation pending final resolution of the other investigation.

(5) The Commission shall send a copy of the complaint to the public servant who is the subject of the complaint within 30 days of the filing.

(c) Investigation of Complaints by the Commission. – The Commission shall investigate all complaints properly before the Commission in a timely manner. The Commission shall initiate an investigation of a complaint within 90 days of the filing of the complaint, or the complaint shall be dismissed. The Commission is authorized to initiate investigations upon request of any member if there is reason to believe that a public servant has or may have violated this Chapter. There is no time limit on Commission-initiated complaint investigations under this section. In determining whether there is reason to believe that a violation has or may have occurred, a member can take general notice of available information even if not formally provided to the Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting investigations.

(d) Investigation by the Commission of Matters Other Than Complaints. – The Commission may investigate matters other than complaints properly before the Commission under subsection (a) of this section. For any investigation initiated under this subsection, the Commission may take any action it deems necessary or appropriate to further compliance with this Chapter, including the initiation of a complaint, the

1       (j) Disposition of Investigations. – Except as permitted under subsection (f) of  
2 this section, after hearing, the Commission shall dispose of the matter in one or more of  
3 the following ways:

4           (1) If the Commission finds substantial evidence of an alleged violation of  
5 a criminal statute, the Commission shall refer the matter to the  
6 Attorney General for investigation and referral to the district attorney  
7 for possible prosecution.

8           (2) If the Commission finds that the alleged violation is not established by  
9 clear and convincing evidence, the Commission shall dismiss the  
10 complaint.

11          (3) If the Commission finds that the alleged violation of this Chapter is  
12 established by clear and convincing evidence, the Commission shall do  
13 one or more of the following:

14           a. Issue a public or private admonishment to the public servant  
15 and notify the employing entity, if applicable.

16           b. Refer the matter to the Governor, the employing entity that  
17 appointed or employed the public servant or of which the public  
18 servant is a member, or the General Assembly for constitutional  
19 officers of the State, for appropriate action, and make  
20 recommendations on sanctions under subsection (k) of this  
21 section.

22       (k) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or  
23 private admonishment, the Commission shall retain its records or findings in  
24 confidence, unless the public servant under inquiry requests in writing that the records  
25 and findings be made public. If the Commission later finds that a public servant's  
26 subsequent unethical activities were similar to and the subject of an earlier private  
27 admonishment, then the Commission may make public the earlier admonishment and  
28 the records and findings related to it.

29       (k) Recommendations of Sanctions. – If the Commission determines, after proper  
30 review and investigation, that action is appropriate, the Commission may recommend  
31 sanctions or issue rulings as it deems necessary or appropriate to protect the public  
32 interest and ensure compliance with this Chapter. In formulating appropriate sanctions,  
33 the Commission may consider the following factors:

34           (1) The public servant's prior experience in an agency or on a board and  
35 prior opportunities to learn the ethical standards for public servants as  
36 set forth in Article 2 of this Chapter, including those dealing with  
37 conflicts of interest and appearances of conflicts of interest.

38           (2) The number of ethics violations.

39           (3) The severity of the ethics violations.

40           (4) Whether the ethics violations involve the public servant's financial  
41 interests or arise from an appearance of conflict of interest.

42           (5) Whether the ethics violations were inadvertent or intentional.

43           (6) Whether the public servant knew or should have known that the  
44 improper conduct was a violation of this Chapter.

1       (a) At the request of any public servant, any individual not otherwise the public  
2 servant who is responsible for the supervision or appointment of a person who is a  
3 public servant, legal counsel for any public servant, any ethics liaison under  
4 G.S. 138A-27, or any member of the Commission, the Commission shall render  
5 advisory opinions on specific questions involving the meaning and application of this  
6 Chapter and the public servant's compliance therewith. The request shall be in writing,  
7 electronic or otherwise, and relate prospectively to real or reasonably anticipated fact  
8 settings or circumstances. The Commission shall issue advisory opinions having  
9 prospective application only. Reliance upon a requested written advisory opinion on a  
10 specific matter shall immunize the public servant, on that matter, from both of the  
11 following:

12               (1) Investigation by the Commission.

13               (2) Any adverse action by the employing entity.

14       (b) Staff to the Commission may issue advisory opinions under rules adopted by  
15 the Commission.

16       (c) The Commission shall interpret this Chapter by rules, and these  
17 interpretations are binding on all public servants upon publication.

18       (d) The Commission shall publish its advisory opinions at least once a year.  
19 These advisory opinions shall be edited for publication purposes as necessary to protect  
20 the identities of the individuals requesting opinions.

21       (e) Except as provided under subsection (d) of this section, requests for advisory  
22 opinions and advisory opinions issued under this section are confidential and not  
23 matters of public record.

24 **"§ 138A-27. Ethics education program.**

25       (a) The Commission shall develop and implement an ethics education and  
26 awareness program designed to instill in all public servants and their immediate staffs a  
27 keen and continuing awareness of their ethical obligations and a sensitivity to situations  
28 that might result in real or potential conflicts of interest or appearances of conflicts of  
29 interest. The Commission shall make basic ethics education and awareness  
30 presentations to all public servants and their immediate staffs upon their election,  
31 appointment or hiring, and shall offer periodic refresher presentations as the  
32 Commission deems appropriate. Every public servant and the immediate staff of every  
33 public servant shall participate in an ethics presentation approved by the Commission  
34 within six months of the person's election, appointment, or hiring, and shall attend  
35 refresher ethics education presentations at least every two years thereafter in a manner  
36 as the Commission deems appropriate. Upon request, the Commission shall assist each  
37 agency in developing in-house education programs and procedures necessary or  
38 desirable to meet the agency's particular needs for ethics education, conflict  
39 identification, and conflict avoidance.

40       (b) Each agency head shall designate an ethics liaison who shall maintain active  
41 communication with the Commission on all agency ethical issues. The ethics liaison  
42 shall continuously assess and advise the Commission of any issues or conduct which  
43 might reasonably be expected to result in a conflict of interest and seek advice and  
44 rulings from the Commission as to their appropriate resolution.

1       (f) The head of each State agency, including the chair of each board subject to  
2 this Chapter, shall ensure that legal counsel employed by or assigned to their agency or  
3 board are familiar with the provisions of this Chapter, including the Ethical Standards  
4 for Public Servants set forth in Article 2 of this Chapter, and are available to advise  
5 public servants on the ethical considerations involved in carrying out their public duties  
6 in the best interest of the public. Legal counsel so engaged may consult with the  
7 Commission, seek the Commission's assistance or advice, and refer public servants and  
8 others to the Commission as appropriate.

9       (g) Taking into consideration the individual autonomy, needs, and circumstances  
10 of each agency and board, the head of each State agency, including the chair of each  
11 board subject to this Chapter, shall consider the need for the development and  
12 implementation of in-house educational programs, procedures, or policies tailored to  
13 meet the agency's or board's particular needs for ethics education, conflict identification,  
14 and conflict avoidance. This includes the periodic presentation to all agency heads, their  
15 chief deputies or assistants, other public servants under their supervision or control, and  
16 members of boards, of the basic ethics education and awareness presentation outlined in  
17 G.S. 138A-27 and any other workshop or seminar program the agency head or board  
18 chair deems necessary in implementing this Chapter. Agency heads and board chairs  
19 may request reasonable assistance from the Commission in complying with the  
20 requirements of this subsection.

21       (h) As soon as reasonably practicable after the designation, hiring, or promotion  
22 of their chief deputies, assistants, or other public servants under their supervision or  
23 control, or learning of the appointment or election of other public servants to a board  
24 covered under this Chapter, all agency heads and board chairs shall (i) notify the  
25 Commission of such designation, hiring, promotion, appointment, or election and (ii)  
26 provide these public servants with copies of this Chapter and all applicable financial  
27 disclosure forms, if these materials and forms have not been previously provided to  
28 these public servants by their appointing authorities. In order to avoid duplication of  
29 effort, agency heads and board chairs shall coordinate this effort with the Commission's  
30 staff.

31 **"§ 138A-29 through 34. [Reserved]"**

32 **"Article 4.**

33 **"Public Disclosure of Economic Interests.**

34 **"§ 138A-35. Purpose.**

35 The purpose of disclosure of the financial and personal interests by public servants is  
36 to assist public servants and those persons who appoint, elect, hire, supervise, or advise  
37 them identify and avoid conflicts of interest and potential conflicts of interest between  
38 the public servant's private interests and the public servant's public duties. It is critical to  
39 this process that current and prospective public servants examine, evaluate, and disclose  
40 those personal and financial interests that could be or cause a conflict of interest or  
41 potential conflict of interest between the public servant's private interests and the public  
42 servant's public duties. Public servants must take an active, thorough, and conscientious  
43 role in the disclosure and review process, including having a complete knowledge of



1 nomination or election to those offices subject to this Article at the time of the filing of  
2 candidacy.

3 (e) The executive director of the State Board of Elections shall forward a  
4 certified copy of the statement of economic interest to the Commission for evaluation.

5 (f) The Commission shall issue forms to be used for the statement of economic  
6 interest and shall revise the forms from time to time as necessary to carry out the  
7 purposes of this Chapter. Except as otherwise set forth in this section, the Commission  
8 shall furnish to all other public servants the appropriate forms needed to comply with  
9 this Article.

10 **"§ 138A-37. Statements of economic interest as public records.**

11 The statements of economic interest filed by prospective public servants under this  
12 Article for appointed or employed positions and written evaluations by the Commission  
13 of these statements are not public records until the prospective public servant is  
14 appointed or is employed by the State. All other statements of economic interest and all  
15 other written evaluations by the Commission of those statements are public records.  
16 After becoming public records, statements shall be made available for inspection and  
17 copying by any person during normal business hours at the Commission's office.

18 **"§ 138A-38. Contents of statement.**

19 (a) Any statement of economic interest filed under this Article shall be on a form  
20 prescribed by the Commission and sworn to by the public servant. Answers must be  
21 provided to all questions. The form shall include the following information about the  
22 public servant and the public servant's immediate family:

23 (1) The name, home address, occupation, employer, and business of the  
24 person filing.

25 (2) A list of each asset and liability of whatever nature (including legal,  
26 equitable, or beneficial interest) with a value of at least ten thousand  
27 dollars (\$10,000) of the prospective or actual public servant, and the  
28 public servant's spouse. This list shall include the following:

29 a. All real estate located in the State owned wholly or in part by  
30 the public servant or the public servant's spouse, including  
31 specific descriptions adequate to determine the location of each  
32 parcel and the specific interest held by the public servant and  
33 the spouse in each identified parcel.

34 b. Real estate that is currently leased or rented to the State.

35 c. Personal property sold to or bought from the State within the  
36 preceding two years.

37 d. Personal property currently leased or rented to the State.

38 e. The name of each publicly owned company in which the value  
39 of securities held exceeds ten thousand dollars (\$10,000).

40 f. The name of each non-publicly owned company or business  
41 entity in which the value of securities or other equity interests  
42 held exceeds ten thousand dollars (\$10,000), including interests  
43 in partnerships, limited partnerships, joint ventures, limited  
44 liability companies or partnerships, and closely held

(\$10,000) from any of the following categories of legal representation:

1. Administrative law.
2. Admiralty.
3. Corporation law.
4. Criminal law.
5. Decedent's estates.
6. Insurance law.
7. Labor law.
8. Local government.
9. Negligence – defendant.
10. Negligence – plaintiff.
11. Real property.
12. Taxation.
13. Utilities regulation.

l. A list of all nonpublicly owned businesses with which, during the past five years, the public servant or the public servant's immediate family has been associated, indicating the time period of that association and the relationship with each business as an officer, employee, director, business associate, or owner. The list also shall indicate whether each does business with, or is regulated by, the State and the nature of the business, if any, done with the State.

m. A list of all gifts, and the sources of the gifts, of a value of more than two hundred dollars (\$200.00) received during the 12 months preceding the date of the statement from sources other than the public servant's extended family, and a list of all gifts, and the sources of the gifts, valued in excess of one hundred dollars (\$100.00) received from any source having business with, or regulated by, the employing entity.

n. A list of all bankruptcies filed during the preceding five years by the public servant, the public servant's spouse, or any entity in which the public servant, or the public servant's spouse, has been associated financially. A brief summary of the facts and circumstances regarding each listed bankruptcy shall be provided.

o. A list of all directorships on all business boards of which the public servant of the public servant's immediate family is a member.

(3) A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction.



1 section, shall be subject to a fine of two hundred fifty dollars (\$250.00), to be imposed  
2 by the Commission.

3 (c) Failure by any public servant to file or complete a statement of economic  
4 interest within 60 days of the receipt of the notice, required under subsection (a) of this  
5 section, shall be deemed to be a violation of this Chapter and shall be grounds for  
6 disciplinary action under G.S. 138A-45.

7 **"§ 138A-40. Concealing or failing to disclose material information.**

8 A public servant who knowingly conceals or fails to disclose information that is  
9 required to be disclosed on a statement of economic interest under this Article shall be  
10 punished as a Class 2 misdemeanor and shall be subject to disciplinary action under  
11 G.S. 138A-45.

12 **"§ 138A-41. Penalty for false or misleading information.**

13 A public servant who provides false or misleading information on a statement of  
14 economic interest as required under this Article knowing that the information is false or  
15 misleading shall be punished as a Class F felon and shall be subject to disciplinary  
16 action under G.S. 138A-45.

17 **"§ 138A-42 through 44. [Reserved]**

18 "Article 5.

19 "Violation Consequences.

20 **"§ 138A-45. Violation consequences.**

21 (a) Violation of this Chapter by any public servant is grounds for disciplinary  
22 action. Except as provided in Article 4 of this Chapter and for perjury under  
23 G.S. 138A-25 and G.S. 138A-38, no criminal penalty shall attach for any violation of  
24 this Chapter.

25 (b) The willful failure of any public servant serving on a board to comply with  
26 this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance,  
27 malfeasance, or nonfeasance, the offending public servant serving on a board is subject  
28 to removal from the board of which the public servant is a member. For appointees of  
29 the Governor and members of the Council of State, the appointing authority may  
30 remove the offending public servant. For appointees of the General Assembly, the  
31 Commission shall exercise the discretion of whether to remove the offending public  
32 servant.

33 (c) The willful failure of any public servant serving as a State employee to  
34 comply with this Chapter is a violation of a written work order, thereby permitting  
35 disciplinary action as allowed by the law, including termination from employment.  
36 Except for employees of State departments headed by a member of the Council of State,  
37 the Governor shall make all final decisions on the manner in which the offending public  
38 servant shall be disciplined. For employees of State departments headed by a member of  
39 the Council of State, the appropriate member of the Council of State shall make all final  
40 decisions on the manner in which the offending public servant shall be disciplined.

41 (d) The willful failure of any constitutional officer of the State to comply with  
42 this Chapter is malfeasance in office for purposes of G.S. 123-5.

## LEGISLATIVE PROPOSAL # 1 SUMMARY

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### HOUSE BILL 2005-RU-47: Executive Branch Ethics Act - 1

#### BILL ANALYSIS

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<b>Committee:</b>	House Select Committee on Ethics and Governmental Reform	<b>Date:</b>	April 26, 2006
<b>Introduced by:</b>		<b>Summary by:</b>	O. Walker Reagan Staff Attorney
<b>Version:</b>	First Edition 2005-RU-47		

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**SUMMARY:** *This proposal, Executive Branch Ethics Act – 1, codifies Executive Order No. One that governs ethics in the executive branch. The Act creates the State Ethics Commission and subjects certain executive branch officials, appointees, and employees to economic interest disclosures and creates statutory ethical standards for these public servants. This proposal is a recommendation of the Subcommittee on Legislative and Executive Ethics.*

**CURRENT LAW:** Most of the regulation of ethics in the executive branch is pursuant to Executive Order No. One (Order) issued by the Governor, most recently on January 1, 2001. This Executive Order is the latest in a succession of similar executive orders governing this subject that have been in effect since January 1977. Under the Governor's limited authority in this area, the Governor has made the order applicable to appointees of the Governor. In addition, the Governor has offered the services of the State Ethics Board (created by the Order) to members of the Council of State and their appointees, the Speaker and President Pro Tempore for their appointees to boards and commissions, and to the UNC Board of Governors.

The Order creates the State Ethics Board (Board). It requires covered officials to file statements of economic interests annually. It establishes rules of conduct for covered officials. The Board is authorized to issue advisory ethics opinions, investigate ethics complaints, and conduct ethics education programs. The decisions of the Board are advisory, and enforcement of the Board's recommendations is left to the discretion of the appointing or hiring authority.

All records of the Board are public, including statements of economic interest filed by perspective appointees prior to their appointment. False statements made on statements of economic interest are not subject to the penalty of perjury. The Governor does not have the authority to require other constitutional officers of the State to participate under the Order or the authority to make the order applicable to appointees of boards and commissions made by persons other than the Governor, including the General Assembly.

**BILL ANALYSIS:** The Executive Branch Ethics Act – 1 bill draft codifies the Order. On certain matters the Order does not address, the Act incorporates ethics procedures and processes copied from the Legislative Ethics Act and statutory ethics provisions unique to the NC Board of Transportation. The draft also includes various policy options suggested by the House Select Committee on Ethics & Governmental Reform at its February 22, 2006 meeting, **and changes suggested at the March 24, 2006 and April 28, 2006 meetings.** The bill is divided into 4 primary sections.

**ARTICLE 1** sets out the purpose of the Act and the applicable definitions. The following definitions are included in Article 1:

the interest. When a conflict exists, the public servant must abstain from participation. If the public servant is unclear if a conflict exists, the public official is required to seek guidance. This section sets out numerous exceptions to the restrictions, primarily involving situations where the benefit is no greater to the public servant than the public in general, or when the public servant has received an ethics opinion that no conflict exists.

**G.S. 138A-13** establishes a process where a public servant can be forced to remove a disqualifying conflict of interest or be required to resign. A disqualifying conflict of interest occurs when a conflict of interest is found to prevent the public servant from fulfilling a substantial function or portion of his or her public duties.

**G.S. 138A-14** prohibits a public servant from hiring or supervising a member of his or her extended family.

**G.S. 138A-15** permits individual State agencies to adopt more stringent ethical standards in addition to the provisions of this Act.

**ARTICLE 3** establishes the State Ethics Commission as an independent, bipartisan commission of seven members appointed by the Governor for 4-year staggered terms. No more than 4 members may be of the same political party. While serving on the Commission, no member may hold or be a candidate for public office, hold office in a political party, participate in or contribute to a political campaign for a public servant the Commission oversees, or otherwise be an employee of the State, a community college or local public school system, or a member of any other State board.

The Commission would have the power to employ staff, review statements of economic interest, render advisory opinions, investigate ethics complaints, oversee ethics education programs, and advise the General Assembly on ethics matters.

**G.S. 138A-25** sets out the authority of the Commission to conduct ethics investigations and to hold hearings on alleged violations of the ethics laws, rules, or the criminal law in the performance of official duties. An investigation must be initiated within 90 days of the receipt of the complaint or the complaint is to be dismissed. After a hearing, the Commission can dismiss the complaint, refer criminal matters to the Attorney General and the district attorney, issue a public admonishment, or recommend other sanctions to the employing or appointing authority. Complaints and initial (probable cause) investigations are not public records, but all documents considered in a hearing are public records. Hearings are held in open session while deliberations are in closed session. Decisions are announced in open session. The Commission has subpoena authority when authorized by the court.

**G.S. 138A-26** sets out the authority of the Commission to issue advisory opinions. A person who seeks an opinion is immunized from sanctions when he or she acts in accordance with an advisory opinion. Requests for advisory opinions and advisory opinions are confidential and not public records, but annual summaries of advisory opinions are to be published and made available to the public.

**G.S. 138A-27** sets out the authority for the Commission to provide for ethics education programs. All public servants **and their immediate staffs (individuals who report directly to the public servant)** are required to take ethics training within 6 months of the beginning of their employment, election, or appointment, and take a refresher course every 2 years thereafter. Each agency will designate an ethics liaison to coordinate ethics compliance and education within each agency. The Commission is also to publish ethics newsletters from time to time.

**G.S. 138A-28** sets out the ethics duties of heads of State agencies. Agency heads, including board chairs, are required to take an active role in promoting ethics in their areas of responsibility. They are expected to remain knowledgeable of ethics laws,

**SECTION 4** transfers the assets and personnel of the State Ethics Board to the State Ethics Commission.

**EFFECTIVE DATE:** The Act becomes effective October 1, 2006, and applies to public servants on or after January 1, 2007, and to acts and conflicts of interest that arise on or after January 1, 2007.

*2005-ru-47e1-SMRU-RU-47*

*H1844e1-SMRU*

## LEGISLATIVE PROPOSAL #2

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A BILL TO BE ENTITLED  
AN ACT TO REVISE THE LEGISLATIVE ETHICS ACT AS RECOMMENDED BY  
THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL  
REFORM.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 14 of Chapter 120 of the General Statutes is repealed.

**SECTION 2.** Chapter 120 of the General Statutes is amended by adding a  
new article to read:

"Article 32.

"Legislative Ethics Act.

"Part 1. General Provisions.

**"§ 120-280. Title.**

This Article shall be known and may be cited as the 'Legislative Ethics Act.'

**"§ 120-281. Definitions.**

The following definitions apply in this Article:

- (1) Business. – Any of the following, whether or not for profit:

  - a. Association.
  - b. Corporation.
  - c. Enterprise.
  - d. Joint venture.
  - e. Organization.
  - f. Partnership.
  - g. Proprietorship.
  - h. Vested trust.
  - i. Every other business interest, including ownership or use of land for income.
- (2) Business associate. – A partner, or member or manager of a limited liability company.
- (3) Business with which associated. – A business in which the legislator or any member of the legislator's immediate family has a pecuniary interest. For purposes of this subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

  - a. The legislator or a member of the legislator's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.
  - b. The fund is publicly traded or the fund's assets are widely diversified.
- (4) Committee. – The Legislative Ethics Committee.

preceding 12 months to the legislator, the legislator's immediate family, or a business with which associated.

c. Receiving, either individually or collectively and directly or indirectly, in the preceding 12 months, gifts or honoraria having an unknown value or having an aggregate value of five hundred dollars (\$500.00) or more from any person. A pecuniary interest does not exist under this sub-subdivision by reason of (i) a gift or bequest received as the result of the death of the donor; (ii) a gift from an extended family member; or (iii) acting as a trustee of a trust for the benefit of another.

d. Holding the position of associate, director, officer, business associate, or proprietor of any business, irrespective of the amount of compensation received.

(17) Public event. – An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House, the Senate, a committee, a subcommittee, a county legislative delegation, a joint committee or a legislative caucus and to which at least ten employees or members of the principal actually attend.

(18) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the legislator or a member of the legislator's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The legislator or a member of the legislator's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

**"§ 120-282 through 120-285. [Reserved]**

**"Part 2. Ethical Standards for Legislators.**

**"§ 120-286. Bribery, etc.**

(a) No person shall offer or give to a legislator or a member of a legislator's immediate household, or to a business with which the legislator is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that the legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

(b) It shall be unlawful for the business associate, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence the legislator in the discharge of the legislator's duties.

1       **(b) No legislator or legislative employee shall knowingly accept anything of**  
2 **monetary value, directly or indirectly, from a legislative lobbyist or principal as defined**  
3 **in G.S. 120-47.1 or an executive lobbyist or principal as defined in G.S. 147-54.31.**

4       **(c) Subsection (b) of this section shall not apply to any of the following:**

- 5           **(1) Meals and beverages for immediate consumption in connection with**  
6 **public events.**
- 7           **(2) Nonmonetary items, other than food or beverages, with a value not to**  
8 **exceed ten dollars (\$10.00) provided by a single donor during a single**  
9 **calendar day.**
- 10          **(3) Informational materials relevant to the duties of the legislator or**  
11 **legislative employee.**
- 12          **(4) Reasonable actual expenses for food, registration, travel, and lodging**  
13 **of the legislator or legislative employee for a meeting at which the**  
14 **legislator or legislative employee participates in a panel or speaking**  
15 **engagement at the meeting related to the legislator's or legislative**  
16 **employee's duties and when expenses are incurred on the actual day of**  
17 **participation in the engagement or incurred within a 24-hour time**  
18 **period before or after the engagement.**
- 19          **(5) Items or services received in connection with a state, regional or**  
20 **national legislative organization of which the General Assembly, the**  
21 **legislator or legislative employee is a member by virtue of the person's**  
22 **legislative position.**
- 23          **(6) Items and services received relating to an educational conference or**  
24 **meeting.**
- 25          **(7) A plaque or similar nonmonetary memento recognizing individual**  
26 **services in a field or specialty or to a charitable cause.**
- 27          **(8) Gifts accepted on behalf of the State.**
- 28          **(9) Anything generally available or distributed to the general public or all**  
29 **other State employees.**
- 30          **(10) Anything for which fair market value is paid.**
- 31          **(11) Commercially available loans made on terms not more favorable than**  
32 **generally available to the public in the normal course of business if not**  
33 **made for the purpose of lobbying.**
- 34          **(12) Contractual arrangements or business relationships or arrangements**  
35 **made in the normal course of business if not made for the purpose of**  
36 **lobbying.**
- 37          **(13) Academic scholarships made on terms not more favorable than**  
38 **scholarships generally available to the public.**
- 39          **(14) Political contributions properly received and reported as required**  
40 **under Article 22A of Article 163 of the General Statutes.**
- 41          **(15) Gifts from the legislator's or the legislative employee's extended**  
42 **family, or a member of the same household of the legislator or the**  
43 **legislative employee, or gifts received in conjunction with a marriage,**  
44 **birth, adoption, or death.**

1 reasonably foreseeable benefit from, the matter under consideration, which would  
2 impair the legislator's independence of judgment or from which it could reasonably be  
3 inferred that the interest or benefit would influence the legislator's participation in the  
4 legislative action. A potential benefit includes a detriment to (i) a business competitor of  
5 the legislator, (ii) a member of the legislator's extended family, or (iii) a business with  
6 which the legislator is associated.

7 (b) A legislator described in subsection (a) of this section shall abstain from  
8 participation in the legislative action. The legislator shall submit in writing the reasons  
9 for the abstention to the principal clerk of the house of which the legislator is a member.

10 (c) Notwithstanding subsection (a) of this section, a legislator may participate in  
11 a legislative action under any of the following circumstances:

12 (1) The only pecuniary or economic interest or reasonably foreseeable  
13 benefit that accrues to the legislator, the legislator's extended family,  
14 or business with which the legislator is associated as a member of a  
15 profession, occupation, or large class, is no greater than that which  
16 could reasonably be foreseen to accrue to all members of that  
17 profession, occupation, or large class.

18 (2) Where a legislative action affects or would affect the legislator's  
19 compensation and allowances as a legislator.

20 (3) Before the legislator participated in the legislative action, the legislator  
21 requested and received a written advisory opinion from the Committee  
22 that authorized the participation. In authorizing the participation under  
23 this subsection, the Committee shall consider the need for the  
24 legislator's particular contribution, such as special knowledge of the  
25 subject matter, to the effective functioning of the General Assembly.

26 (4) When action is ministerial only and does not require the exercise of  
27 discretion.

28 (5) When a legislative body records in its minutes that it cannot obtain a  
29 quorum in order to take the legislative action because legislators are  
30 disqualified from acting under this section.

31 **"§ 120-294. Employment of members of legislator's extended family.**

32 A legislator shall not cause the employment, appointment, promotion, transfer, or  
33 advancement of an extended family member of the legislator to a State or local office or  
34 position, except for positions at the General Assembly as permitted by the Legislative  
35 Services Commission.

36 **"§ 120-295 through 299. [Reserved]**

37 "Part 3. Legislative Ethics Committee.

38 **"§ 120-300. Legislative Ethics Committee established.**

39 There is established the Legislative Ethics Committee.

40 **"§ 120-301. Membership.**

41 (a) The Legislative Ethics Committee shall consist of ten members, five Senators  
42 appointed by the President Pro Tempore of the Senate, among them – two from a list of  
43 four submitted by the Majority Leader and two from a list of four submitted by the  
44 Minority Leader, and five members of the House of Representatives appointed by the



- (1) Prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.
- (2) Receive and file any information voluntarily supplied that exceeds the requirements of this Article.
- (3) Organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed the actual cost.
- (4) Preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10-year period, these documents shall be destroyed.
- (5) Prepare a list of ethical principles and guidelines to be used by legislators and legislative employees to identify potential conflicts of interest and prohibited behavior and to suggest rules of conduct that shall be adhered to by legislators and legislative staff.
- (6) Advise each General Assembly committee of specific danger areas where conflicts of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.
- (7) Advise General Assembly members or render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of members upon ethical points raised.
- (8) Propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.
- (9) Upon receipt of information that a legislator owes money to the State and is delinquent in repaying the obligation, to investigate and dispose of the matter according to the terms of this Article.
- (10) Receive and review all statements of economic interest filed with the Committee by prospective and actual legislators and evaluate whether (i) the statements conform to the law and the rules of the Committee, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.
- (11) Render advisory opinions in accordance with G.S. 120-307.
- (12) Investigate alleged violations in accordance with G.S. 120-306 and to hire separate legal counsel, through the Legislative Services Commission, for these purposes.
- (13) Initiate and maintain oversight of ethics educational programs for legislators and legislative employees consistent with G.S. 120-308.
- (14) Adopt rules to implement this Article, including those establishing ethical standards and guidelines governing legislators and legislative employees in attending to and performing their duties.

1           (3)   In addition to subdivision (2) of this subsection, the Committee may  
2           decline to accept or further investigate a complaint if it determines that  
3           any of the following apply:

4           a.     The complaint is frivolous or brought in bad faith.

5           b.     The individuals and conduct complained of have already been  
6           the subject of a prior complaint.

7           c.     The conduct complained of is primarily a matter more  
8           appropriately and adequately addressed and handled by other  
9           federal, State or local agencies or authorities, including law  
10          enforcement authorities. If other agencies or authorities are  
11          conducting an investigation of the same actions or conduct  
12          involved in a complaint filed under this section, the Committee  
13          may stay its complaint investigation pending final resolution of  
14          the other investigation.

15          (4)   The Committee shall send a copy of the complaint to the legislator  
16          who is the subject of the complaint within 30 days of the filing.

17          (c)   Investigation of Complaints by the Committee. – The Committee shall  
18          investigate all complaints properly before the Committee in a timely manner. The  
19          Committee shall initiate an investigation of a complaint within 90 days of the filing of  
20          the complaint, or the complaint shall then become a public record. In determining  
21          whether there is reason to believe that a violation has or may have occurred, a member  
22          of the Committee can take general notice of available information even if not formally  
23          provided to the Committee in the form of a complaint. The Committee may utilize the  
24          services of a hired investigator when conducting investigations.

25          (d)   Investigation by the Committee of Matters Other Than Complaints. – The  
26          Committee may investigate matters other than complaints properly before the  
27          Committee under subsection (a) of this section. For any investigation initiated under this  
28          subsection, the Committee may take any action it deems necessary or appropriate to  
29          further compliance with this Article, including the initiation of a complaint, the issuance  
30          of an advisory opinion under G.S. 120-307, or referral to appropriate law enforcement  
31          or other authorities pursuant to subsection (i)(2) of this section.

32          (e)   Legislator Cooperation With Investigation. – Legislators shall promptly and  
33          fully cooperate with the Committee in any Committee-related investigation. Failure to  
34          cooperate fully with the Committee in any investigation shall be grounds for sanctions  
35          under G.S. 120-325.

36          (f)   Dismissal of Complaint After Preliminary Inquiry. – If the Committee  
37          determines at the end of its preliminary inquiry that (i) the individual who is the subject  
38          of the complaint is not a legislator or (ii) the complaint does not allege facts sufficient to  
39          constitute a violation of this Article, the Committee shall dismiss the complaint and  
40          provide written notice of the dismissal to the individual who filed the complaint and the  
41          person against whom the complaint was filed.

42          (g)   Notice. – If at the end of its preliminary inquiry the Committee determines to  
43          proceed with further investigation into the conduct of a legislator, the Committee shall  
44          provide written notice to the individual who filed the complaint and the legislator as to

1           (3)    If the Committee issues an admonishment as provided in subdivision  
2               (2)a. of this subsection, the legislator affected may upon written  
3               request to the Committee have the matter referred as provided under  
4               subdivision (2)c. of this subsection.

5           (j)    Effect of Dismissal or Private Admonishment. – In the case of a dismissal or  
6               private admonishment, the Committee shall retain its records or findings in confidence,  
7               unless the legislator under inquiry requests in writing that the records and findings be  
8               made public. If the Committee later finds that a legislator's subsequent unethical  
9               activities were similar to and the subject of an earlier private admonishment then the  
10              Committee may make public the earlier admonishment and the records and findings  
11              related to it.

12          (k)    Findings and Record. – The Committee shall render formal and binding  
13               opinions of its findings and recommendations made pursuant to complaints or  
14               Committee investigations. In all matters in which the complaint is a public record, the  
15               Committee shall ensure that a complete record is made and preserved as a public record.

16          (l)    Confidentiality. – All motions, complaints, written requests, investigations  
17               and investigative materials shall be confidential and not a matter of public record,  
18               except as otherwise provided in this section.

19          (m)    Any action or lack of action by the Committee under this section shall not  
20               limit the right of each house of the General Assembly to discipline or to expel its  
21               members.

22    **"§ 120-307. Advisory opinions.**

23          (a)    At the request of any legislator, the Committee may render advisory opinions  
24               on specific questions involving the meaning and application of this Article and the  
25               legislator's compliance with the requirements of this Article. The request shall be in  
26               writing, electronic or otherwise, and relate prospectively to real or reasonably  
27               anticipated fact settings or circumstances. The Committee shall issue advisory opinions  
28               having prospective application only. Reliance upon a requested written advisory opinion  
29               on a specific matter shall immunize the legislator, on that matter, from a finding by the  
30               Committee of a violation of this Article.

31          (b)    Staff to the Committee may issue informal, nonbinding advisory opinions  
32               under rules adopted by the Committee.

33          (c)    The Committee shall interpret this Article by rules, and these interpretations  
34               are binding on all legislators upon publication.

35          (d)    The Committee shall publish its advisory opinions at least once a year. These  
36               advisory opinions shall be edited for publication purposes as necessary to protect the  
37               identities of the individuals requesting opinions.

38          (e)    Except as provided under subsection (d) of this section, requests for advisory  
39               opinions and advisory opinions issued under this section are confidential and not  
40               matters of public record.

41    **"§ 120-308. Ethics education program.**

42               The Committee shall develop and implement an ethics education and awareness  
43               program designed to instill in all legislators and legislative employees a keen and  
44               continuing awareness of their ethical obligations and a sensitivity to situations that

1 economic interest with the petition filed under that section. A person seeking to have  
2 write-in votes counted for the person in a general election shall file a statement of  
3 economic interest at the same time the candidate files a declaration of intent under  
4 G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of  
5 economic interest at the same time that the president of the convention certifies the  
6 names of its candidates to the State Board of Elections under G.S. 163-98.

7 (c) The boards of elections shall provide for notification of the statement of  
8 economic interest requirements of this Article to be given to any candidate filing for  
9 nomination or election to those offices subject to this Article at the time of the filing of  
10 candidacy.

11 (d) If a candidate for an office subject to this Article does not file the statement  
12 of economic interest within the time required by this Article, the county board of  
13 elections immediately shall notify the candidate by registered mail, restricted delivery to  
14 addressee only, that, if the statement is not received within 15 days, the candidate shall  
15 not be certified as the party nominee, or in the case of a candidate nominated by a new  
16 party under G.S. 163-98 that the candidate shall be decertified by the State Board of  
17 Elections. If the statement is not received within 15 days of notification, the board of  
18 elections authorized to certify a candidate as nominee to the office shall not certify the  
19 candidate as nominee under any circumstances, regardless of the number of candidates  
20 for the nomination and regardless of the number of votes the candidate receives in the  
21 primary. If the delinquent candidate was nominated by a new party under G.S. 163-98,  
22 the State Board of Elections shall decertify the candidate, and no county board of  
23 elections shall place the candidate's name on the general election ballot as nominee of  
24 the party. A vacancy thus created on a party's ticket shall be considered a vacancy for  
25 the purposes of G.S. 163-114, and shall be filled according to the procedures set out in  
26 G.S. 163-114.

27 (e) Every person appointed to fill a vacant seat in the General Assembly under  
28 G.S. 163-11 shall file with the Legislative Services Office and the county board of  
29 elections of each county in the senatorial or representative district a statement of  
30 economic interest as specified in this Article no later than 10 days after taking the oath  
31 of office. If a person required to file a statement of economic interest as required under  
32 this section fails to file the statement within the time required by this section, the  
33 Legislative Services Officer shall notify the person that the statement must be received  
34 within 15 days of notification. If the statement is not received within the time allowed in  
35 this subsection, then the Legislative Services Officer shall notify the Legislative Ethics  
36 Committee of the failure of the person to file the statement.

37 (f) The chair of the board of elections shall forward a certified copy of the  
38 statement of economic interest to the Committee for evaluation within 10 days of the  
39 date the statement of economic interest is filed with the board of elections.

40 (g) The Committee shall issue forms to be used for the statement of economic  
41 interest and shall revise the forms from time to time as necessary to carry out the  
42 purposes of this Article. Except as otherwise set forth in this section, the Committee  
43 shall furnish the appropriate forms needed to comply with this Article to legislators.

44 **"§ 120-317. Statements of economic interest as public records.**

- 1           h.     The person shall make a good faith effort to list any individual  
2                 or business entity with which the person, the person's extended  
3                 family, or any business with which the person or a member of  
4                 the person's extended family is associated, has a financial or  
5                 professional relationship provided (i) a reasonable person would  
6                 conclude that the nature of the financial or professional  
7                 relationship presents a conflict of interest or the appearance of a  
8                 conflict of interest for the person; or (ii) a reasonable person  
9                 would conclude that any other financial or professional interest  
10                of the individual or business entity would present a conflict of  
11                interest or appearance of a conflict of interest for the person.  
12                For each individual or business entity listed under this  
13                subsection, the person shall describe the financial or  
14                professional relationship and provide an explanation of why the  
15                individual or business entity has been listed.
- 16           i.     A list of all other assets and liabilities with a valuation of at  
17                 least ten thousand dollars (\$10,000), including bank accounts  
18                 and debts.
- 19           j.     A list of each source (not specific amounts) of income  
20                 (including capital gains) shown on the most recent federal and  
21                 State income tax returns of the person filing where ten thousand  
22                 dollars (\$10,000) or more was received from that source.
- 23           k.     If the person is a practicing attorney, an indication of whether  
24                 the person, or the law firm with which the person is affiliated,  
25                 earned legal fees during any single year of the past five years in  
26                 excess of ten thousand dollars (\$10,000) from any of the  
27                 following categories of legal representation:
- 28                 1.     Administrative law.  
29                 2.     Admiralty.  
30                 3.     Corporation law.  
31                 4.     Criminal law.  
32                 5.     Decedents' estates.  
33                 6.     Insurance law.  
34                 7.     Labor law.  
35                 8.     Local government.  
36                 9.     Negligence – defendant.  
37                 10.    Negligence – plaintiff.  
38                 11.    Real property.  
39                 12.    Taxation.  
40                 13.    Utilities regulation.
- 41           l.     A list of all nonpublicly owned businesses with which, during  
42                 the past five years, the person or the person's immediate family  
43                 has been associated or has an economic interest, indicating the  
44                 time period of that association and the relationship with each

1       (b) Any person who fails to file or complete a statement of economic interest  
2 within 30 days of the receipt of the notice required under subsection (a) of this section,  
3 shall be subject to a fine of two hundred fifty dollars (\$250.00), to be imposed by the  
4 Committee.

5       (c) Failure by any person to file or complete a statement of economic interest  
6 within 60 days of the receipt of the notice required under subsection (a) of this section  
7 shall be deemed to be a violation of this Article and shall be grounds for disciplinary  
8 action under G.S. 120-325.

9 **"§ 120-320. Concealing or failing to disclose material information.**

10       A person who knowingly conceals or fails to disclose information that is required to  
11 be disclosed on a statement of economic interest under this Article shall be punished as  
12 a Class 2 misdemeanor and shall be subject to disciplinary action under G.S. 120-325.

13 **"§ 120-321. Penalty for false or misleading information.**

14       A person who provides false or misleading information on a statement of economic  
15 interest as required under this Article knowing that the information is false or  
16 misleading shall be punished as a Class F felon and shall be subject to disciplinary  
17 action under G.S. 120-325.

18 **"§ 120-322 through 324. [Reserved]**

19                               "Part 5. Violation Consequences.

20 **"§ 120-325. Violation consequences.**

21       (a) Violation of this Article by any legislator or legislative employee is grounds  
22 for disciplinary action. Except as specifically provided in this Article or for perjury  
23 under G.S. 120-306 and G.S. 120-318, no criminal penalty shall attach for any violation  
24 of this Article.

25       (b) The willful failure of any legislator to comply with this Article shall be  
26 deemed a violation of this Article for purposes of G.S. 120-306.

27       (c) Nothing in this Article affects the power of the State to prosecute any person  
28 for any violation of the criminal law.

29       (d) The Legislative Ethics Committee may seek to enjoin violations of  
30 G.S. 120-288."

31       **SECTION 3.** Article 7 of Chapter 120 of the General Statutes is amended by  
32 adding the following new section to read:

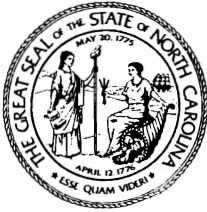
33 **"§ 120-32.6. Certain employment authority.**

34       G.S. 114-2.3 and G.S. 147-17 shall not apply to the General Assembly."

35       **SECTION 4.** Section 1 of this Act becomes effective January 1, 2007. The  
36 remainder of this act becomes effective October 1, 2006, and applies to persons holding  
37 office and employed on or after January 1, 2007, and acts and conflicts of interest that  
38 arise on or after January 1, 2007.

## LEGISLATIVE PROPOSAL # 2 SUMMARY

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### HOUSE BILL 1843: Revise Legislative Ethics Act - 1

#### BILL ANALYSIS

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<b>Committee:</b>	House Judiciary I	<b>Date:</b>	May 10, 2006
<b>Introduced by:</b>	Reps. Hackney, Howard, Brubaker, Luebke	<b>Summary by:</b>	O. Walker Reagan
<b>Version:</b>	First Edition		Staff Attorney

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**SUMMARY:** *House Bill 1843 revises the current Legislative Ethics Act by conforming the ethical standards and ethical processes for the General Assembly to the ethical standards and ethical processes applicable to certain public officials in the Executive Branch through Executive Order No. One and as proposed in House Bill 1844 - Executive Branch Ethics Act. The proposal is a recommendation from the House Select Committee on Ethics and Governmental Reform.*

**CURRENT LAW:** The current Legislative Ethics Act was originally enacted in 1975. The Act is in three Parts. Part 1 is the Code of Legislative Ethics that defines certain conduct involving legislators that would be either criminal or unethical conduct. Part 1 also defines what constitutes a conflict of interest for legislators. Part 2 sets out the requirements for statements of economic interest required to be filed by legislators. Part 3 establishes the Legislative Ethics Committee and defines the powers and authority of the Committee including the responsibility for overseeing the statement of economic interest process, issuing ethics advisory opinions, and conducting investigations of alleged unethical conduct.

**BILL ANALYSIS:** House Bill 1843 retains all the provisions of the existing Legislative Ethics Act and supplements these provisions with more definitions of conflicts of interest, establishes a limit on gifts received by legislators from lobbyists and lobbyist principals, and provides for a more detailed and frequent statement of economic interest. The bill organizes the Act into 5 Parts.

**Part 1** sets out the applicable definitions for the Act. It retains the existing definitions with a few changes and adds additional definitions.

**Business with which associated** – Changed to incorporate a pecuniary interest which changes the current law to apply to a business in which a person holds \$10,000 worth of securities (currently is \$5,000) or 5% of the outstanding stock of the business.

**Extended Family** – Spouse, descendant, ascendant, or sibling of the public servant, or descendant, ascendant or sibling of the spouse of the public servant.

**Public Event** – An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House, the Senate, a committee, a subcommittee, a county legislative delegation, a joint committee or a legislative caucus and to which at least ten employees or members of the principal actually attend.

**Part 2** establishes ethical standards for legislators.

**G.S. 120-286** recodifies the existing legislative bribery statute found in G.S. 120-86.

**G.S. 120-287** mirrors the Executive Branch Ethics Act and prohibits a legislator from using the legislator's public position for personal financial gain for the legislator, the



**Part 3** recodifies the existing law establishing and defining powers of the Legislative Ethics Committee, adds definitions of the investigative powers and procedures for ethics violations to mirror similar provisions in the Executive Branch Ethics bill draft, and provides for mandatory ethics education.

**G.S. 120-308** sets out the authority for the Committee to provide for ethics education programs. All legislators and legislative employees are required to take ethics training within 3 months of the beginning of their employment, election, or appointment.

**Part 4** sets out the requirements for filing statements of economic interest. In addition to recodifying the existing time for legislative candidates to file statements of economic interest, new provisions are added to require legislators to file additional statements annually.

**G.S. 120-316** continues to require candidates for the legislature to file statements of economic interest within 10 days of the end of the filing period of their candidacy and also requires legislators to file additional statements no later than March 15th of every year thereafter.

**G.S. 129-318** sets out the contents of the Statement of Economic Interest (SEI). Included in the information to be reported are assets in excess of \$10,000 in real estate holdings, personal property, business interests including stocks and bonds, interests in vested trusts, bank accounts, sources of income, attorney's areas of practice; businesses owned in the previous 5 years; gifts in excess of \$200 from persons other than extended family members; bankruptcies; and directorships of businesses. Statements of economic interest must be sworn, and false statements would be subject to penalty of perjury. The Committee is to evaluate each statement and issue an opinion on the existence or lack of conflicts of interests and potential conflicts of interests.

**G.S. 120-319** requires the Committee to notify every person who fails to file or complete his or her required SEI within 30 days of the due date. Any person who fails to file or complete the SEI within 30 days of the receipt of the late notice is subject to a \$250 fine. Any person who fails to file or complete the SEI within 60 days of receipt of the late notice shall be subject to disciplinary action under G.S. 120-325.

**G.S. 120-320** makes it a Class 2 misdemeanor for a person to knowingly conceal or fail to disclose required information on a SEI.

**G.S. 120-321** makes it a Class F felony for a person to provide false or misleading information on a SEI knowing the information to be false or misleading. The level of punishment is the same as the penalty for perjury.

**Part 5** sets out the sanctions for violation of the Act. Willful violations by a legislator are considered to be an unethical act and subject to sanctions as set forth in G.S. 120-325, which could include censure or expulsion.

**EFFECTIVE DATE:** The Act becomes effective October 1, 2006, applies to person holding office and employed on or after January 1, 2007, and acts and conflicts of interest that arise on or after January 1, 2007.

*\*Brad Krehely contributed to the drafting of this summary.*

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AN ACT TO AMEND THE LEGISLATIVE LOBBYING LAWS BY ESTABLISHING WAITING PERIODS BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY BANNING CERTAIN GIFTS; BY ESTABLISHING QUARTERLY REPORTING OF EXPENDITURES WITH ADDITIONAL INTERIM REPORTING; BY EXPANDING THE COVERAGE OF THE LOBBYING LAWS TO INCLUDE EXECUTIVE BRANCH OFFICERS; BY LIMITING CAMPAIGN CONTRIBUTIONS BY REGISTERED LOBBYISTS; AND BY MAKING OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

**SECTION 1.** Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

(a) No member or former member of the General Assembly may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after the end of that member's service in the General Assembly.

(c) No individual registered as a legislative lobbyist shall serve as a campaign treasurer under Chapter 163 of the General Statutes as defined in G.S. 163-278.6(19) for a campaign for election as a member of the General Assembly, Governor, or Council of State.

(e) No legislative lobbyist or another acting on the legislative lobbyist's behalf shall permit a covered person, legislative employee, or that person's immediate family member to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure."

**"§ 120-47.7B. Powers and duties of the Secretary of State.**

- d. The chief deputy or chief administrative assistant of each person designated under sub-subdivisions a. and c. of this subdivision.
- e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivisions a., c., and d. of this subdivision.
- f. Employees in exempt positions as defined in G.S. 126-5(b) and employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a), and confidential secretaries to these individuals.
- g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.
- h. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.
- i. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.
- j. For the System of Community Colleges, the voting members of the State Board of Community Colleges, the President and chief financial officer of the System of Community Colleges, the president, chief financial officer and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.
- (1a)(1c) ~~The term "expenditure" means any Expenditure. – Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or thing of value greater than ten dollars (\$10.00), (\$10.00) per single calendar day or a contract, agreement, promise or other obligation whether or not legally enforceable, that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a covered person, legislative employee, person or that person's immediate family member.~~
- (1f) Extended family. – Spouse, descendant, ascendant, or sibling of the covered person or, descendant, ascendant, or sibling of the spouse of the covered person.
- (1b) ~~The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.~~
- (2),(3) ~~Repealed by Session Laws 1991, c. 740, s. 1.1.~~
- (2a) Gift. – Anything of value without valuable consideration.

- that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to legislative ~~or executive action~~-action, or both.
- (6) ~~The term "lobbyist" means an~~Lobbyist. – An individual who meets any of the following criteria:
- a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying.
  - b. Represents another person and receives compensation for the purpose of lobbying.
  - e. ~~Is legislative liaison personnel.~~
- The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General Assembly.~~Assembly or executive branch officers.~~
- (7) ~~The terms "lobbyist's principal" and "principal" mean the~~Lobbyist principal and principal. – The person on whose behalf the legislative lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for legislative lobbying, the principal is the person whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist's principal is the association or other organization, not the members of the association or other organization.
- (7a) ~~The term "news medium" means mainstream~~News medium. – Mainstream media providers whose sole purpose is to report events and that does not involve research or advocacy.
- (8) ~~The term "person" means any~~Person. – Any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons which has an independent legal existence.
- (8a) Public event. – Either of the following:
- a. An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House, Senate, a committee, a subcommittee, a county legislative delegation, a joint committee or legislative caucus and to which at least 10 employees or members of the principal actually attend.
  - b. An organized gathering of individuals open to the general public or to which at least ten executive branch officers are

1 The ~~legislative~~-lobbyist shall file a new registration statement after that date, and the  
2 applicable fee shall be due and payable.

3 **"§ 120-47.3. Registration fee.**

4 A fee of one hundred dollars (\$100.00) is due and payable to the Secretary of State  
5 by either the lobbyist or the lobbyist's principal at the time of each lobbyist registration.  
6 Fees so collected shall be deposited in the General Fund of the State. The Secretary of  
7 State shall allow fees required under this section to be paid electronically but may not  
8 require the fees to be paid electronically. The Secretary of State shall adopt rules  
9 providing for the waiver or reduction of the fees required by this section in cases of  
10 hardship.

11 **"§ 120-47.4. Authorization from lobbyist's principal; fee from principal.**

12 (a) Each ~~legislative~~-lobbyist or lobbyist's principal shall file with the Secretary of  
13 State within 10 business days after the ~~legislative~~-lobbyist's registration a written  
14 authorization signed by the lobbyist's principal authorizing the lobbyist to represent the  
15 principal.

16 (b) The form of the authorization shall be prescribed by the Secretary of State  
17 and shall include the lobbyist's principal's full name, complete address and telephone  
18 number, name and title of the official signing for the lobbyist's principal, and the name  
19 of each lobbyist registered to represent the lobbyist's principal. The Secretary of State  
20 shall make available as soon as practicable the authorization of the lobbyists' principals  
21 in an electronic, searchable format.

22 (c) An amended authorization shall be filed with the Secretary of State no later  
23 than 10 days after any change in the information supplied for the lobbyist's principal on  
24 the previous authorization. Each supplementary authorization shall include a complete  
25 statement of the information that has changed.

26 (d) Except as provided for in subsection (e) of this section, a fee of one hundred  
27 dollars (\$100.00) is due and payable to the Secretary of State at the time the lobbyist's  
28 principal's first authorization statement is filed each calendar year for a ~~legislative~~  
29 lobbyist. ~~The fee for the legislative lobbyist's authorization shall be seventy-five dollars~~  
30 ~~(\$75.00) if an authorization for the principal to be represented by an executive lobbyist~~  
31 ~~is filed at the same time. No additional fee is due for additional authorizations filed for~~  
32 ~~legislative lobbyists.~~

33 (e) The Secretary of State shall adopt rules providing for the waiver or reduction  
34 of the fees required by fee in subsection (d) of this section. The rules shall provide that  
35 the fees be reduced to a total of twenty-five dollars (\$25.00) if the lobbyist's principal  
36 had annual revenues in its most recent fiscal year of three hundred thousand dollars  
37 (\$300,000) or less and is represented by no more than two different lobbyists. ~~This~~  
38 ~~reduced fee covers authorizations filed for the principal's legislative and executive~~  
39 ~~lobbyists.~~

40 **"§ 120-47.5. Contingency lobbying fees and election influence prohibited.**

41 (a) No person shall act as a ~~legislative~~-lobbyist for compensation that is  
42 dependent upon the result or outcome of any legislative action.

43 (b) ~~No legislative lobbyist or legislative lobbyist's principal person~~ shall attempt  
44 to influence the action of any covered person by the promise of financial support of the

- 1           (8) Gifts accepted on behalf of the State.
- 2           (9) Anything generally available or distributed to the general public or all
- 3           other State employees.
- 4           (10) Anything for which fair market value is paid.
- 5           (11) Commercially available loans made on terms not more favorable than
- 6           generally available to the public in the normal course of business if not
- 7           made for the purpose of lobbying.
- 8           (12) Contractual arrangements or business relationships or arrangements
- 9           made in the normal course of business if not made for the purpose of
- 10           lobbying.
- 11           (13) Academic scholarships made on terms not more favorable than
- 12           scholarships generally available to the public.
- 13           (14) Political contributions properly received and reported as required
- 14           under Article 22A of Chapter 163 of the General Statutes.
- 15           (15) Gifts from the covered person's extended family, or a member of the
- 16           same household of the covered person, or gifts received in conjunction
- 17           with a marriage, birth, adoption, or death.
- 18           (16) Things of monetary value given to a executive branch officer valued in
- 19           excess of ten dollars (\$10.00) where the thing of monetary value is
- 20           entertainment or related expenses associated with the public business
- 21           of industry recruitment, promotion of international trade, or the
- 22           promotion of travel and tourism, and the executive branch officer is
- 23           responsible for conducting the business on behalf of the State,
- 24           provided all the following conditions apply:
- 25           a. The executive branch officer did not solicit the thing of value,
- 26           and the executive branch officer did not accept the thing of
- 27           value in the performance of the executive branch officer's
- 28           official duties.
- 29           b. The executive branch officer reports electronically to the
- 30           Commission within 30 days of receipt of the thing of value. The
- 31           report shall include a description and value of the thing of value
- 32           and a description how the thing of value contributed to the
- 33           public business of industry recruitment, promotion of
- 34           international trade, or the promotion of travel and tourism. This
- 35           report shall be posted to the Commission's public Web site.
- 36           c. A tangible thing of value in excess of ten dollars (\$10.00), other
- 37           than meals or beverages, shall be turned over as State property
- 38           to the Department of Commerce within 30 days of receipt.
- 39           (17) Things of monetary value of personal property valued at less than one
- 40           hundred dollars (\$100.00) given to an executive branch officer in the
- 41           commission of the executive branch officer's official duties if the gift
- 42           is given to the executive branch officer as a personal gift in another
- 43           country as part of an overseas trade mission, and the giving and

- (2) Entertainment, food, and beverages.
- (3) Meetings and events.
- (4) Gifts.
- (5) Other expenditures.
- (6) Solicitation of others to lobby, including if such expenditures are incurred in connection or in concert with other reportable expenditures.

~~In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.~~

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of ~~legislative employees and~~ immediate family members of covered persons ~~and legislative employees who~~ benefited from the expenditure shall be listed separately.

(d) When a ~~legislative lobbyist~~ fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the ~~legislative lobbyist~~ of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the ~~legislative lobbyist~~ shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No ~~legislative lobbyist~~ may register or reregister under this Article until the ~~legislative lobbyist~~ has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a ~~legislative lobbyist~~ for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide to the lobbyist with required notifications of the initial violation.

1 ~~In addition, the compensation paid or agreed to be paid to all legislative lobbyists~~  
2 ~~shall be reported, whether or not a covered person, legislative employee, or family~~  
3 ~~member is affected. If a legislative lobbyist is a full-time employee of the lobbyist's~~  
4 ~~principal, or is compensated by means of an annual fee or retainer, the lobbyist's~~  
5 ~~principal shall estimate and report the portion of the salary, fee, or retainer that~~  
6 ~~compensates for lobbying. The lobbyist's principal's expenditure report shall include an~~  
7 ~~itemized description of all expenditures reimbursed or paid to legislative lobbyists for~~  
8 ~~lobbying that are not reported on the legislative lobbyists' reports.~~

9 (c) All reports shall be in the form prescribed by the Secretary of State and open  
10 to public inspection upon filing. When more than 15 covered persons benefit from an  
11 expenditure, no names of individuals need be reported provided that the report identifies  
12 the approximate number of covered persons benefiting and, with particularity, the basis  
13 for their selection, including the name of the legislative body, committee, caucus, or  
14 other group whose membership list is a matter of public record in accordance with  
15 G.S. 132-1 or including a description of the group that clearly distinguishes its purpose  
16 or composition from the general membership of the General Assembly. The  
17 approximate number of ~~legislative employees and immediate family members of~~  
18 ~~covered persons and legislative employees who benefited from the expenditure shall be~~  
19 ~~listed separately.~~

20 (d) When a lobbyist's principal fails to file an expenditure report as required in  
21 this section, the Secretary of State shall send a certified or registered letter advising the  
22 lobbyist's principal of the delinquency and the penalties provided by law. Within 20  
23 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United  
24 States mail to the Secretary of State the required report and a late filing fee in an amount  
25 equal to the late filing fee under G.S. 163-278.34(a)(2).

26 (e) Filing of the required report and payment of the late fee within the time  
27 extended shall constitute compliance with this section. Failure to file an expenditure  
28 report in one of the manners prescribed in this section shall result in revocation of any  
29 and all registrations of a lobbyist's principal under this Article. No lobbyist's principal  
30 may register or reregister under this Article until the lobbyist's principal has fully  
31 complied with this section.

32 (f) Appeal of a decision by the Secretary of State under this section shall be in  
33 accordance with Article 3 of Chapter 150B of the General Statutes.

34 (g) The Secretary of State may adopt rules to facilitate complete and timely  
35 disclosure of expenditures, including the format of reports and additional categories of  
36 information, and to protect the addresses of payees under protective order issued  
37 pursuant to Chapter 50B of the General Statutes or participating in the Address  
38 Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary  
39 of State shall not impose any penalties or late filing fees upon a principal for subsequent  
40 failures to comply with the requirements of this section if the Secretary of State failed to  
41 provide to the lobbyist's principal with required notifications of the initial violation.  
42 This provision shall not apply to a failure by the principal to file an expenditure report  
43 in a timely manner.

44 "§ 120-47.7A. Reserved for future codification purposes.



- (1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative matters to members of the General Assembly and not acting as a legislative lobbyist.
- (2) A person appearing before a ~~legislative committee~~ committee, commission, board, council, or other collective body whose membership includes one or more covered persons at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative lobbyist.
- (3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties.
- b. Notwithstanding the persons exempted in this Article, the ~~Governor, Council of State, Constitutional officers of the State~~ and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated ~~legislative~~ liaison personnel with the Secretary of State.
- (4) A person performing professional services in drafting ~~bills~~ bills, or in advising and rendering opinions to clients, or to covered persons on behalf of clients, as to the construction and effect of proposed or pending ~~legislation~~ legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.
- (5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.
- (6) Repealed by Session Laws 1991, c. 740, s. 1.1.
- (7) ~~Covered persons and legislative employees~~ persons while acting in their official capacity.
- (8) A person responding to inquiries from a ~~member of the General Assembly or a legislative employee~~ covered person and who engages in no further activities as a ~~legislative~~ lobbyist in connection with that or any other legislative ~~matter~~ or executive action.
- (9) ~~An employee who represents the employer's interests in action for no more than three hours in a quarter, provided that neither the employee nor the employer makes any expenditure as defined in G.S. 120-47.1.~~ individual while participating in an advocacy day.
- (10) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license or permit.



1 (5) A thing of value that is paid for by the State.

2 (f) Reports required by this section shall be filed within 10 business days after  
3 the end of the quarter in which the expenditure was made, with the Secretary of State in  
4 a manner prescribed by the Secretary of State, which may include electronic reports.

5 **"§ 120-47.8B. Advocacy Day.**

6 (a) No lobbyist's principal may conduct more than one advocacy day per  
7 calendar year.

8 (b) All advocacy days to lobby the General Assembly must be scheduled through  
9 the Legislative Services Office.

10 (c) All advocacy days to lobby executive branch officers must be scheduled  
11 through the Governor's Office.

12 (d) All lobbyists' principals conducting an advocacy day shall comply with this  
13 Article while conducting the advocacy day.

14 **"§ 120-47.9. Punishment for violation.**

15 (a) Whoever willfully violates any provision of this Article shall be guilty of a  
16 Class 1 misdemeanor. In addition, no legislative-lobbyist who is convicted of a violation  
17 of the provisions of this Article shall in any way act as a legislative or executive  
18 lobbyist for a period of two years following conviction.

19 (b) In addition to the criminal penalties set forth in this section, the Secretary of  
20 State may levy civil fines for willful false or incomplete reporting up to five thousand  
21 dollars (\$5,000) per violation.

22 **"§ 120-47.10. Enforcement of Article by Attorney General.**

23 (a) The Secretary of State may investigate complaints of violations of this  
24 Article. The Secretary of State and shall report apparent violations of this Article to the  
25 Attorney General. The Attorney General shall, upon complaint, make an appropriate  
26 investigation thereof, and the Attorney General shall forward a copy of the investigation  
27 to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which  
28 Wake County is a part, who shall prosecute any person who violates any provisions of  
29 this Article.

30 (b) Complaints of violations of this Article involving the Secretary of State or  
31 any member of the Department of the Secretary of State shall be referred to the  
32 Attorney General for investigation in accordance with G.S. 120-47.7B. Any portion of  
33 the complaint not involving alleged violations of this Article by the Secretary of State or  
34 any member of the Department of the Secretary of State shall remain with the Secretary  
35 of State for investigation. The Attorney General shall, upon receipt of a complaint,  
36 make an appropriate investigation thereof, and the Attorney General shall forward a  
37 copy of the investigation to the District Attorney of the prosecutorial district as defined  
38 in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who  
39 violates any provisions of this Article.

40 (c) Complaints of improper lobbying involving the Attorney General or any  
41 member of the Department of Justice shall be investigated by the Secretary of State and  
42 any apparent violations reported to the District Attorney of that prosecutorial district as  
43 defined in G.S. 7A-60 of which Wake County is a part. The District Attorney of that

1       (d)    The Secretary of State shall publish its advisory opinions at least once a year,  
2 edited as necessary to protect the identities of the individuals requesting opinions.

3       (e)    Except as provided under subsection (d) of this section, requests for advisory  
4 opinions and advisory opinions issued pursuant to this section are confidential and not  
5 matters of public record.

6       **"§ 120A-14. Lobbying education program.**

7       (a)    The Secretary of State shall develop and implement a lobbying education and  
8 awareness program designed to instill in all covered persons, lobbyists, and lobbyists'  
9 principals a keen and continuing awareness of their obligations and a sensitivity to  
10 situations that might result in real or potential violation of this Article or other related  
11 laws. The Secretary shall make basic lobbying education and awareness presentations to  
12 all covered persons upon their election, appointment or hiring and shall offer periodic  
13 refresher presentations as the Secretary deems appropriate. Every covered person shall  
14 participate in a lobbying presentation approved by the Secretary within six months of  
15 the person's election, appointment or hiring, and shall attend refresher ethics education  
16 presentations at least every two years thereafter in a manner the Secretary deems  
17 appropriate. Upon request, the Secretary shall assist each agency in developing in-house  
18 education programs and procedures necessary or desirable to meet the agency's  
19 particular needs for lobbying education.

20       (b)    The Secretary shall publish a newsletter containing summaries of the  
21 Secretary's opinions, policies, procedures, and interpretive bulletins as issued from time  
22 to time. The newsletter shall be distributed to all covered persons, lobbyists, and  
23 lobbyists' principals. Publication under this subsection may be done electronically.

24       (c)    The Secretary shall assemble and maintain a collection of relevant State laws,  
25 rules, and regulations that set forth lobbying standards applicable to covered persons.  
26 The collection of laws, rules and regulations shall be made available electronically as  
27 resource material to covered persons, lobbyists and lobbyists' principals, upon request.

28       **"§ 120-15. No gift registry.**

29       (a)    The Secretary of State shall establish a "No Gifts" registry for persons subject  
30 to this Article. The "No Gifts" registry shall be published and updated with the list of  
31 lobbyists and lobbyists' principals required under G.S. 120-47.2.

32       (b)    Except as provided in this subsection, lobbyists and lobbyists' principals shall  
33 not give unsolicited gifts allowed under G.S. 120-47.5A(a1)(2) to persons placing their  
34 names on the registry, without the persons' expressed consent. Gifts of informational  
35 directories may be given to persons placing their names on the registry.

36       (c)    The Secretary shall have the authority to adopt rules to implement this section  
37 in compliance with the following criteria:

38           (1)   The registration is valid from the time the person registers until  
39               January 1 of the following year, unless the person requests in writing  
40               the removal of that person's name.

41           (2)   The registration shall be in writing.

42       (d)    Violations of this section shall not constitute a crime but shall be subject to  
43 civil fines of up to five hundred dollars (\$500.00) as levied by the Secretary of State."

44       **SECTION 4.** Sections 2 and 3 of S.L. 2005-456 are repealed.

1           (3) Accept a contribution from a lobbyist registered under Article 9A of  
2           Chapter 120 of the General Statutes.

3           (c) It shall not be deemed a violation of this section for a legislator or executive  
4 branch official to serve on a board or committee of an organization that makes a  
5 solicitation of a lobbyist registered under Article 9A of Chapter 120 of the General  
6 Statutes as long as that legislator or executive branch official does not directly  
7 participate in the solicitation and that legislator or executive branch official does not  
8 directly benefit from the solicitation.

9           (d) As used in this section, the following terms mean:

10           (1) Candidate campaign committee. – As defined in G.S. 163-278.38Z and  
11 that candidate has filed a notice of candidacy for office as a member of  
12 the General Assembly or a Constitutional officer of the State.

13           (2) Executive branch official. – As defined in G.S. 120-47.1(1d)(a).

14           (3) Legislator. – As defined in G.S. 120-47.1(4d).

15           (e) A violation of this section is a Class 2 misdemeanor.

16           **SECTION 5.3.** G.S. 163-278.13B(a)(1) reads as rewritten:

17           "(1) "Limited contributor" means a ~~lobbyist registered pursuant to Article~~  
18 ~~9A of Chapter 120 of the General Statutes, that lobbyist's agent, that~~  
19 ~~lobbyist's principal as defined in G.S. 120-47.1(7), G.S. 120-47~~ or a  
20 political committee that employs or contracts with or whose parent  
21 entity employs or contracts with a lobbyist registered pursuant to  
22 Article 9A of Chapter 120 of the General Statutes."

23           **SECTION 6.** If any section or provision of this act is declared  
24 unconstitutional or invalid by the courts, it does not affect the validity of this act as a  
25 whole or any part other than the part so declared to be unconstitutional or invalid.

26           **SECTION 7.** Sections 1, 2, 6, and 7 of this act are effective when the act  
27 becomes law, and the new G.S. 120-47.7C(d) applies to appointments made on or after  
28 that date. The remainder of this act becomes effective January 1, 2007.

## LEGISLATIVE PROPOSAL # 3 SUMMARY



### HOUSE BILL 1849: Lobbying Reforms 2006

#### BILL ANALYSIS

<b>Committee:</b>	House Judiciary I	<b>Date:</b>	May 11, 2006
<b>Introduced by:</b>	Reps. Hackney, Howard, Gibson, Sherrill	<b>Summary by:</b>	R. Erika Churchill
<b>Version:</b>	First Edition		Committee Counsel

**SUMMARY:** *House Bill 1849 amends North Carolina's lobbying laws to do all of the following:*

- 1. Implements earlier certain prohibitions creating waiting periods before certain State officers may lobby and barring lobbyists from certain appointments and other activities.*
- 2. Bans certain gifts by lobbyists and lobbyists' principals to covered persons (legislators, legislative employees, and executive branch officers).*
- 3. Expands coverage of the lobbying laws to additional executive branch officers and employees, with a combined single registration, fee, regulation, and reporting periods for both legislative and executive branch lobbying.*
- 4. Bans campaign contributions by registered lobbyists.*
- 5. Permits the issuance of advisory opinions and requires lobbying education programs.*

#### **CURRENT LAW:**

Under current law effective until January 1, 2007, a person who is paid to try to influence legislative action (action on a specific bill, resolution, amendment, etc.) is required to register as a lobbyist with the Secretary of State and report at the end of each regular session, any expenditures in excess of \$25 spent on lobbying legislators. Expenditures spent for the general goodwill of legislators not tied to specific legislative action do not need to be reported, nor do expenditures spent on legislative staff or legislators' family members. There is no limitation on the types or amount of expenditures that a lobbyist can spend on a legislator for lobbying purposes. Every principal who hires the services of a lobbyist also has to file reports on expenditures that the principal made for lobbying, including the amount of compensation paid to lobbyists. Exempt from the lobbying laws are persons who lobby on their own behalf, persons appearing before the General Assembly at the General Assembly's request, elected and appointed local government officials and employees lobbying on behalf of their local governments, State agency legislative liaison personnel, and members of the General Assembly. Violation of this law is punished as a Class 1 misdemeanor.

S.L. 2005-456 (Senate Bill 612) amended the current law, to take effect January 1, 2007. Changes effective January 1, 2007, include:

- Developing goodwill is added as part of the definition of lobbying.
- The definition of "expenditure" for reporting purposes includes anything of value over \$10.
- The lobbying laws are applied to certain persons in the Executive branch under a separate registration, fee and reporting.
- Legislative staff are included under lobbying regulations.
- The frequency of reporting lobbying expenditures is increased to monthly during regular session and quarterly in the interim; and quarterly reports for executive branch lobbying.
- Legislators and certain executive branch officials are prohibited from lobbying within 6 months of leaving office.
- Lobbyists are prohibited from serving as campaign treasurers for legislative races.

any covered person benefiting from the expenditure (or legislative employee or those person's immediate family members) in each of the following categories:

- Transportation and lodging
  - Entertainment, food, and beverages
  - Meetings and events
  - Gifts
  - Solicitation of others to lobby
  - Other expenditures

The Secretary of State is granted rulemaking authority to facilitate disclosure of expenditures, including the format of the report and additional categories.

- The lobbyist's principal must also report, in addition to the expenditures reported by the lobbyist, the compensation paid or agreed to be paid to each lobbyist.
- Requires expenditures of \$200 made for the purpose of lobbying from persons not required to register and report as lobbyists or lobbyist's principals or more to be reported. If the person giving the gift is in North Carolina, that person shall make the report. If the person giving the gift is outside North Carolina, the person accepting the gift shall make the report. Certain exceptions apply.
- Authorizes the Secretary of State to issue advisory opinions on issues arising under the lobbying law.
- Requires continuing lobbying education programs for legislators, legislative employees, executive branch officers, lobbyists and lobbyists' principals.
- Clarifies the no-gift registry for gifts from lobbyists.
- Bans campaign contributions by lobbyists to candidates or candidate's committees if the candidate has filed for office as a member of the General Assembly or a Constitutional officer of the State. \*\*\*\*This prohibition may have constitutional implications.

**EFFECTIVE DATE:** Except as noted above, the act becomes effective January 1, 2007.

**BACKGROUND:** In 2005, the North Carolina General Assembly passed S.L. 2005-456 (SB 612), which amended North Carolina's lobbying laws effective January 1, 2007. The bill is a recommendation of the House Select Committee on Ethics and Governmental Reform. That Committee's charge, as amended on February 20, 2006, directs the Committee to "Examine the provisions of the 2005 rewrite of the lobbying law, S.L. 2005-456 (Senate Bill 612) to determine if portions of that law could be implemented prior to its original effective date of January 1, 2007 and determine whether any additional areas of lobbying regulation should be clarified or strengthened, including prohibiting lobbyists from raising funds for or personally contributing to political campaigns, and from holding any position in a legislative or executive branch campaign."

*\* Walker Reagan and Brad Krehely contributed substantially to the drafting of this summary.*

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## LEGISLATIVE PROPOSAL # 4

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A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF CANDIDATES' CAMPAIGN FUNDS FOR PERSONAL PURPOSES UNRELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

**"§ 163-278.16B. Use of contributed amounts for certain purposes.**

**(a) Permitted Uses.** – A contribution accepted by a candidate or candidate's committee may be used only for the following purposes:

- (1) Ordinary expenditures in connection with the campaign for public office of the candidate.
- (2) Ordinary expenses in connection with the duties and activities of the individual as holder of an elective office.
- (3) Donations to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)).
- (4) Contributions to a national, State, or local committee of a political party.
- (5) Contributions to another candidate for office in North Carolina or to a candidate's committee.
- (6) To return all or a portion of a contribution to the contributor.
- (7) Payment of any penalties against the committee imposed by a board of elections or a court of competent jurisdiction.

**(b) Prohibited Use.** –

- (1) In general. – A contribution described in subsection (a) of this section shall not be converted by any individual to personal use.
- (2) Conversion. – For purposes of subdivision (1) of this subsection, a contribution shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of an individual or other entity that would exist irrespective of the candidate's election campaign or duties and activities as officeholder, including the following:
  - a. A home mortgage, rent, or utility payment.
  - b. A clothing purchase.
  - c. A noncampaign-related automobile expense.
  - d. A country club membership.
  - e. A vacation or other noncampaign-related trip.
  - f. A household food item.

## LEGISLATIVE PROPOSAL # 4 SUMMARY

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### HOUSE DRAFT 2005-RR-65: Permitted Use of Campaign Funds

#### BILL ANALYSIS

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<b>Committee:</b>	House Select Committee on Ethics and Governmental Reform	<b>Date:</b>	April 28, 2006
<b>Introduced by:</b>		<b>Summary by:</b>	William R. Gilkeson
<b>Version:</b>	2005-RR-65 [v.11]		Committee Co-Counsel

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**SUMMARY:** *This proposal would prohibit the use of candidates' campaign funds for personal purposes unrelated to campaigns and officeholding duties. It would also amend the reporting statutes to require that when a payment is made to one payee for several goods or services, the statement must itemize the amount paid for each purpose. It was recommended by this committee's subcommittee on Campaign Finance/Reporting and Election Laws. Effective January 1, 2007.*

**CURRENT LAW:** Currently North Carolina is one of 10 states that places no restrictions on how candidates may spend the funds in their campaign accounts that have been contributed to support their candidacies. Converting those funds to personal use, such as mortgage payments, personal consumer purchases, and retirement accounts, is not prohibited. Such personal use may trigger tax liability for the candidate, but does not violate the campaign finance laws as long as the personal use is publicly reported.

Exceptions to this rule are candidates and political parties whose campaigns receive public funding. Candidates for appellate judge who receive payments from the NC Public Campaign Fund must limit their use of those funds to "campaign-related purposes only." *GS 163-278.64*. The State Board of Elections is required to publish guidelines for what that term means. It has done so. Also, parties that receive money from the NC Political Parties Financing Fund must use the grants "only for legitimate campaign expenses," examples of which are listed in the statute. *GS 163-278.42*.

**BILL ANALYSIS:** This proposal would add a new statute to Article 22A of GS Chapter 163, the NC Campaign Finance Law. *Section 1 of proposal*. The new statute would set forth what are permitted uses of money contributed to a candidate or candidate's committee, and what are prohibited uses.

Permitted uses would be the following:

- Ordinary expenditures in connection with the campaign for public office of the candidate.
- Ordinary expenses in connection with the duties and activities of the individual as holder of an elective office.
- Donations to charitable organizations.

After looking at an initial draft of this proposal at the March 7 meeting of the subcommittee, the members gave the following directions:

- Instead of prohibiting personal use of leftover funds, prohibit person use of campaign funds at any time.
- Add as a permitted use contributions to other candidates.

Get input from the State Board of Elections about wording on itemizing lump sum payments



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AN ACT TO LOWER THE THRESHOLD FROM ONE HUNDRED DOLLARS TO FIFTY DOLLARS FOR ACCEPTING A POLITICAL CONTRIBUTION IN CASH; TO REQUIRE THE REPORTING OF THE IDENTITY OF A CONTRIBUTOR WHO MAKES A CONTRIBUTION OF MORE THAN FIFTY DOLLARS BY MONEY ORDER; TO SPECIFY THE TIME PERIOD BY WHICH THE THRESHOLD FOR IDENTIFYING AN INDIVIDUAL CONTRIBUTOR'S IDENTITY IS MEASURED; TO ADD A PENALTY FOR ACCEPTING CONTRIBUTIONS FROM CERTAIN NONLEGAL SOURCES; AND TO BAR PROSECUTION IF BEST EFFORTS ARE MADE TO ENSURE THAT A CONTRIBUTION IS FROM A LEGAL SOURCE, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

**SECTION 1.** G.S. 163-278.14(b) reads as rewritten:

**SECTION 2.** G.S. 163-278.8(d) reads as rewritten:

"(d) A treasurer shall not be required to report the name of any individual who is a resident of this State who makes a total contribution of one hundred dollars (\$100.00) or less but he shall instead report the fact that he has received a total contribution of one hundred dollars (\$100.00) or less, the amount of the contribution, and the date of receipt. However, if a contribution is made by money order, the treasurer shall report the name of the contributor if the amount is more than fifty dollars (\$50.00). If a treasurer receives contributions of one hundred dollars (\$100.00) or less, each at a single event, he may account for and report the total amount received at that event, the date and place of the event, the nature of the event, and the approximate number of people at the event. With respect to the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods, if the price or value received for any single service or goods exceeds one hundred dollars (\$100.00), the treasurer shall account for and report the name of the individual paying for such services or goods, the amount received, and the date of receipt, but if the price

## LEGISLATIVE PROPOSAL # 5 SUMMARY



### HOUSE DRAFT 2005-RR-61: Contribution Changes

#### BILL ANALYSIS

<b>Committee:</b>	House Select Committee on Ethics and Governmental Reform	<b>Date:</b>	May 8, 2006
<b>Introduced by:</b>		<b>Summary by:</b>	William R. Gilkeson
<b>Version:</b>	2005-RR-61		Committee Counsel

**SUMMARY:** *This proposal would drop from \$100 to \$50 the amount of a contribution that could be accepted in cash. It would add a penalty for acceptance of a contribution from any source that is prohibited from making a contribution, and it would provide a "best efforts" method for contributees to use to protect themselves from accepting illegal contributions and from prosecution. It would also would reduce from \$100 to \$50 the threshold for publicly reporting an individual contributor's identity if that contributor made the contribution by money order. It would also specify the time period during which cumulative contributions would count toward that \$50 threshold or the standard \$100 threshold for reporting the contributor's identity: the "election cycle." The proposal was recommended by this committee's subcommittee on Campaign Finance/Reporting and Election Laws. Effective January 1, 2007.*

**CURRENT LAW:** Currently, North Carolina's campaign finance law has a \$100 threshold for contributions that may be accepted in cash. *GS 163-278.14*. Any contribution above that must be "in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification."

Current law also requires that treasurers must keep records of contributors, but they are only required to identify an individual contributor on the campaign finance report if the individual's contribution is more than \$100. *GS 163-278.8*

If a contributor's identity must be reported, that contributor must be identified by name, address, and principal occupation. "Principal occupation" is defined to mean job title or profession, plus employer's name or employer's specific field of business activity. *GS 163-278.11*. When a treasurer shows that "best efforts" have been made to obtain, maintain and submit that information, any report by shall be considered to be in compliance with the law. *GS 163-278.11(c)*. The State Board of Elections is directed by statute to adopt rules to specify what are "best efforts." Although the State Board has not adopted such rules, it provides a form that can be sent to contributors asking for the information and it provides a drop-down menu on its electronic filing software showing names of fields of business activity used by the IRS.

The law speaks of the \$100 reporting threshold in terms of "total contribution," implying that if one contributor makes more than one contribution of \$100 or less, but those contributions add

The Court expressed an attitude of deference to the legislative branch in determining what level of contribution should result in disclosure of the contributor.

At the March 24 meeting of the full House Select Committee on Ethics and Governmental Reform, Rep. Pryor Gibson asked if the subcommittee had looked into the problem candidates have of determining whether their contributions come from business accounts rather than personal accounts. His question gave rise to the provisions that are in Section 3 of the proposal.

At the April 28 meeting of the committee, the bill was amended to remove the general \$100-to-\$50 drop in the threshold and drop the threshold only for contributions made by money order. The State Board of Elections has said that contributions through money orders have been a problem for it in the past. In the 2005 session, the General Assembly added this language to GS 163-278.14: "For contributions by money order, the State Board shall prescribe methods to ensure an audit trail for every contribution so that the identity of the contributor can be determined."

*2005-RR-61/2005-RR-61-SMRR*

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AN ACT TO STRENGTHEN POLITICAL COMMITTEE TREASURER TRAINING,  
AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS  
AND GOVERNMENTAL REFORM.

**SECTION 1.** G.S. 163-278.7(f) reads as rewritten:

(f) ~~The State Board of Elections shall provide training for every~~Every treasurer of a political committee, prior to the election in which the political committee is involved,~~committee shall participate in training as to the duties of the office,~~office ~~within three months of appointment, and at least once every four years thereafter.~~ The State Board of Elections shall provide each treasurer with a CD-ROM, DVD, videotape, or other electronic document containing the training as to the duties of the ~~office,~~office ~~in person, through~~ and shall conduct regional seminars for ~~in-person training,~~ seminars, and through interactive electronic means. The treasurer may choose to participate in training prior to each election in which the political committee is involved. All such training shall be free of charge to the treasurer."

**SECTION 2.** This act becomes effective July 1, 2006.

**EFFECTIVE DATE:**

The act would become effective July 1, 2006.

## LEGISLATIVE PROPOSAL # 7

### A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF BLANK CHECKS AS CAMPAIGN CONTRIBUTIONS AND TO DELINEATE WHAT IS LAWFUL AND UNLAWFUL PARTICIPATION BY AN INTERMEDIARY IN POLITICAL FUND-RAISING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

**"§ 163-278.20A. Making a contribution through an intermediary.**

(a) Lawful Contributions Through Intermediaries. – It is lawful for any entity that is not otherwise prohibited from making the contribution to make one through an intermediary as long as all the following conditions are satisfied:

(1) The original contributor, on the instrument with which the contribution is made, makes a complete designation of the amount of the contribution, the date the contribution is made, and the political committee, candidate, or other lawful entity that the contributor intends to be the recipient of the contribution. If the contribution is by check, the contributor must sign and date the check and must complete the amount and payee spaces on the check. If an individual contributor, because of disability, lack of knowledge of the precise name of the contributee, or another justifiable reason, is unable to complete the check or other instrument, that contributor may receive assistance in completing it, but the substance of the completion shall be entirely at the direction of the contributor.

(2) The contribution is within the limits provided in G.S. 163-278.13.

(3) The transaction is reported by the contributee and the contributor if reporting is required by this Article.

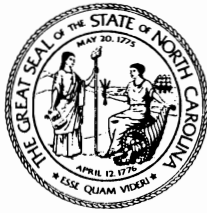
(4) The intermediary is not prohibited from soliciting contributions by G.S. 163-278.13B.

(5) The contribution is delivered to the contributee within 20 days after the intermediary takes possession of the instrument by which the contribution is made.

(b) Unlawful Contributions Through Intermediaries. – It is unlawful for any entity to make a contribution through an intermediary if the conditions of subsection (a) of this section are not satisfied. No one but the contributor shall complete any portion of a contribution check or other contribution instrument. If an individual contributor, because of disability, lack of knowledge of the precise name of the contributee, or another justifiable reason, is unable to complete the check or other instrument, that contributor may receive assistance in completing it, but the substance of the completion shall be entirely at the direction of the contributor.

1                   **SECTION 4.** This act becomes effective January 1, 2007, and applies to any  
2 contribution made or accepted on or after that date and to any contribution received or  
3 forwarded on or after that date.

## LEGISLATIVE PROPOSAL # 7 SUMMARY



### BILL ANALYSIS

## HOUSE DRAFT : No Blank Contribution Checks

<b>Committee:</b>	House Select Committee on Ethics and Governmental Reform	<b>Date:</b>	April 28, 2006
<b>Introduced by:</b>		<b>Summary by:</b>	William R. Gilkeson
<b>Version:</b>	2005-RR-63 [v.9]		Co-Committee Counsel

**SUMMARY:** *This proposal would require that anyone making a contribution through an intermediary must designate the intended recipient of the contribution. If the contribution is by check, the contributor must fill in the payee space and the date on the check. If the contributor does so, the contributor may rely on an intermediary to deliver the check to the recipient. The involvement of the intermediary in that case would not have to be reported. However, the proposal would not allow an intermediary to fill in any portion of the check. It was recommended by this committee's subcommittee on Campaign Finance/Reporting and Election Laws. Effective January 1, 2007.*

**CURRENT LAW:** Currently, NC campaign finance law does not address the practice of "bundling," an apparently common practice in which an intermediary gathers up contribution checks from individuals and delivers them all together to a candidate or committee. The State Board of Elections has given the opinion that the practice is not illegal as long as the check is completed.

It has recently been debated whether bundling is legal even if the intermediary completes a contribution check that the contributor has left blank. An old NC statute, dating to the enactment of the current Campaign Finance Law in 1974, states that no one may solicit contributions unless they first advise those solicited the name of the candidate or political committee for whom the contribution will be used, or that a decision will be reached later how the contribution will be used, but no later than 20 days prior to the pending primary or general election. That statute, GS 163-278.20, has been cited as authority that intermediaries may fill in blank contributor checks.

**BILL ANALYSIS:** This proposal adds a statute to Article 22A of GS Chapter 163 spelling out what is the legal way and what is the illegal way to make a contribution through an intermediary. *Section 1 of the proposal.* It states that making a contribution through an intermediary is legal if all the following are true:

- The contributor completely designates the amount, date, and intended recipient of the contribution. If the contribution is by check, all the blanks in the check must be filled in by the contributor.
- The contribution is within the \$4,000 limit or whatever limit is applicable.



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## LEGISLATIVE PROPOSAL # 8

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A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN REGULATION OF ELECTIONEERING COMMUNICATIONS IN NORTH CAROLINA, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 163-278.80 reads as rewritten:

**"§ 163-278.80. Definitions.**

As used in this Article, the following terms have the following definitions:

- (1) The term "disclosure date" means either of the following:
  - a. The first date during any calendar year when an electioneering communication is aired after an entity has made disbursements incurred expenses for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars (\$10,000).
  - b. Any other date during that calendar year by which an entity has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars (\$10,000) since the most recent disclosure date for that calendar year.
- (2) The term "electioneering communication" means any broadcast, cable, or satellite communication that has all the following characteristics:
  - a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
  - b. Is made within one of the following time periods:
    1. 60 days before a general or special an election for the office sought by the candidate, or
    2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.
  - c. Is targeted to the relevant electorate.
- (3) The term "electioneering communication" does not include any of the following:
  - a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless those facilities are owned or controlled by any political party, political committee, or candidate.
  - b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.
  - c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely

1 paid to an individual, committee, association, or other organization or group of  
2 individuals for services rendered or other payment of debt owed."

3 **SECTION 3** G.S. 163-278.90 reads as rewritten:

4 **"§ 163-278.90. Definitions.**

5 As used in this Article, the following terms have the following definitions:

6 (1) The term "disclosure date" means either of the following:

- 7 a. The first date during any calendar year when an electioneering  
8 communication is transmitted after an entity has ~~made~~  
9 ~~disbursements—~~incurred expenses for the direct costs of  
10 producing or transmitting electioneering communications  
11 aggregating in excess of ten thousand dollars (\$10,000).  
12 b. Any other date during that calendar year by which an entity has  
13 made disbursements for the direct costs of producing or  
14 transmitting electioneering communications aggregating in  
15 excess of ten thousand dollars (\$10,000) since the most recent  
16 disclosure date for that calendar year.

17 (2) The term "electioneering communication" means any mass mailing or  
18 telephone bank that has all the following characteristics:

- 19 a. Refers to a clearly identified candidate for a statewide office or  
20 the General Assembly.  
21 b. Is made within one of the following time periods:  
22 1. 60 days before a general or special an election for the  
23 office sought by the candidate, or  
24 2. 30 days before a primary election or a convention of a  
25 political party that has authority to nominate a candidate  
26 for the office sought by the candidate.  
27 c. Is targeted to the relevant electorate.

28 (3) The term "electioneering communication" does not include any of the  
29 following:

- 30 a. A communication appearing in a news story, commentary, or  
31 editorial distributed through any newspaper or periodical,  
32 unless that publication is owned or controlled by any political  
33 party, political committee, or candidate.  
34 b. A communication that constitutes an expenditure or  
35 independent expenditure under Article 22A of this Chapter.  
36 c. A communication that constitutes a candidate debate or forum  
37 conducted pursuant to rules adopted by the Board or that solely  
38 promotes that debate or forum and is made by or on behalf of  
39 the person sponsoring the debate or forum.  
40 d. A communication that is distributed by a corporation solely to  
41 its shareholders or employees, or by a labor union or  
42 professional association solely to its members.  
43 e. A communication made while the General Assembly is in  
44 session which, incidental to advocacy for or against a specific

(9) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article."

**SECTION 4.** G.S. 163-278.92(a) reads as rewritten:

"(a) Prohibition. – No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any payment from a prohibited source may make any disbursement for the costs of producing and airing any electioneering ~~communication~~. communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds contributed solely by entities other than prohibited sources. For the purpose of this section, the term "electioneering communication" does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for exclusively by funds provided by individuals and the disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by entities other than prohibited sources directly to that account. For purposes of this section, the term "payment" shall not include monies paid to an individual, committee, association, or other organization or group of individuals for services rendered or other payment of debt owed."

**SECTION 5.** This act is effective when it becomes law.

## LEGISLATIVE PROPOSAL # 8 SUMMARY

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### BILL ANALYSIS

## HOUSE DRAFT: Strengthen Electioneering Communications.

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<b>Committee:</b>	House Select Committee on Ethics and Governmental Reform	<b>Date:</b>	May 5, 2006
<b>Introduced by:</b>		<b>Summary by:</b>	R. Erika Churchill
<b>Version:</b>	2005-ST-16		Committee Co-Counsel

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**SUMMARY:** *Effective when it becomes law, the proposed draft would do the following with respect to electioneering communications:*

- *Decrease the targeted relevant electorate with respect to legislative races to 2,500 persons within the district, and amend the definition of mass mailing.*
- *Clarify the disclosure date is triggered by the expense being incurred, rather than the payment for the costs being made by the entity producing the electioneering communication.*
- *Clarify that that any individual, committee, association, or other organization or group of individuals can produce an electioneering communication even if they have taken a contribution from a prohibited source by segregating the funds to prove that the electioneering communication was produced with only allowable source's contributions.*

### CURRENT LAW:

Electioneering communications are governed by Articles 22E and 22F of Chapter 163 of the General Statutes. Electioneering communications are broken down into two major categories, mass mailings and telephone banks, and broadcast, cable or satellite communications. For either, the electioneering communication is a communication that refers to a clearly identified candidate for statewide office or General Assembly, is made either 30 days before the primary or 60 days before the general election, and is to the targeted relevant electorate. For broadcast, cable or satellite communications, the targeted relevant electorate is defined as 50,000 persons for a statewide office or 7,500 persons within the district for a General Assembly race. For mass mailings and telephone banks, the targeted relevant electorate is defined as 50,000 persons for a statewide office or 5,000 persons within the district for a General Assembly race. Mass mailings are defined as "any mailing by United States mail or facsimile that is targeted to the relevant electorate and is made by a commercial vendor or made from any commercial list." G.S. 163-278.90(4)

If an entity is producing and communicating an electioneering communication, the entity is required to report the expenditures following the first date in a calendar year when that entity has made disbursements in excess of \$10,000.

In producing and communicating an electioneering communication, prohibited sources are not allowed to make disbursements for electioneering communications. Prohibited sources are

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AN ACT TO ESTABLISH A PILOT PROGRAM TO PROVIDE CANDIDATES FOR  
SELECTED LEGISLATIVE SEATS WITH THE OPTION OF FINANCING  
THEIR CAMPAIGNS FROM A PUBLICLY SUPPORTED FUND, PROVIDED  
THAT THEY GAIN AUTHORIZATION TO DO SO FROM REGISTERED  
VOTERS AND THAT THEY ABIDE BY STRICT FUND-RAISING AND  
SPENDING LIMITS; AS RECOMMENDED BY THE HOUSE SELECT  
COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

**SECTION 1.** Chapter 163 of the General Statutes is amended by adding a new Article to read:

"The North Carolina Legislative Campaigns Pilot Program.

The purpose of this Article is to explore methods to ensure the vitality and fairness of democratic elections in North Carolina, to the end that any eligible citizen of this State can realistically choose to seek and run for public office. It is also the purpose of this Article to explore methods to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption is minimized and that the equal and meaningful participation of all citizens in the democratic process is ensured. Accordingly, this Article establishes the North Carolina Legislative Campaigns Pilot Fund as an alternative source of campaign financing for candidates for the General Assembly who obtain a sufficient number of qualifying contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for two seats in the House of Representatives and two seats in the Senate, as selected in G.S. 163-278.97A, in elections to be held in 2008 and thereafter.

The following definitions apply in this Article:

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1 available under G.S. 163-278.99(b)(4).

2 **"§ 163-278.97. Legislative Campaigns Pilot Fund established; sources of funding.**

3 (a) Establishment of Fund. – The North Carolina Legislative Campaigns Pilot  
4 Fund is established to finance the election campaigns of certified candidates for office  
5 and to pay administrative and enforcement costs of the Board related to this Article. The  
6 Fund is a special, dedicated, nonlapsing, nonreverting fund. Any interest generated by  
7 the Fund is credited to the Fund. The Board shall administer the Fund.

8 (b) Sources of Funding. – Money received from all the following sources must be  
9 deposited in the Fund:

10 (1) Unspent Fund revenues distributed for an election that remain unspent  
11 or uncommitted at the time the recipient is no longer a certified  
12 candidate in the election.

13 (2) Voluntary donations made directly to the Fund.

14 (3) Appropriations by the General Assembly.

15 (c) Determination of Fund Amount. – By April 1, 2007, and every two years  
16 thereafter, the Board, in conjunction with the Advisory Council, shall prepare and  
17 provide to the Joint Legislative Commission on Governmental Operations of the  
18 General Assembly a report documenting, evaluating, and making recommendations  
19 relating to the administration, implementation, and enforcement of this Article. In its  
20 report, the Board shall set out the funds received to date and the expected needs of the  
21 Fund during the next election cycle.

22 **"§ 163-278.97A. Selection of districts for pilot program.**

23 Four districts shall be selected for the pilot program every two years as follows:

24 (1) The majority and minority leaders of the Senate shall each select a  
25 different district in the Senate from a list of districts in which the  
26 candidates have volunteered to participate.

27 (2) The majority and minority leaders of the House of Representatives  
28 shall each select a different district in the House from a list of districts  
29 in which the candidates have volunteered to participate.

30 Those leaders report their selections to the Executive Director of the State Board of  
31 Elections no later than August 1 of the year before the election. If any one of the leaders  
32 fails to report a selection by August 1, the State Board of Elections by August 10 shall  
33 make the selection that leader was authorized to make.

34 **"§ 163-278.98. Requirements for participation.**

35 (a) Declaration of Intent to Participate. – Any individual choosing to receive  
36 campaign funds from the Fund shall first file with the Board a declaration of intent to  
37 participate in the act as a candidate for a stated office. The declaration of intent shall be  
38 filed before or during the qualifying period and before collecting any qualifying  
39 contributions. In the declaration, the candidate shall swear or affirm that only one  
40 political committee, identified with its treasurer, shall handle all contributions,  
41 campaign-related expenditures, and obligations for the participating candidate and that  
42 the candidate will comply with the contribution and expenditure limits set forth in  
43 subsection (c) of this section and all other requirements set forth in this Article or  
44 adopted by the Board. Failure to comply is a violation of this Article.

1 residing in the candidate's district, and personal and family  
2 contributions permitted under subdivision (4) of this subsection. The  
3 total contributions the candidate may accept during this period shall  
4 not exceed the maximum qualifying contributions for that candidate.  
5 In addition to these contributions, the candidate may only expend  
6 during this period the remaining money raised pursuant to subdivision  
7 (1) of this subsection and possible rescue funds received pursuant to  
8 G.S. 163-278.101.

9 (3) After the qualifying period and through the date of the general  
10 election, the candidate shall expend only the funds the candidate  
11 receives from the Fund pursuant to G.S. 163-278.99(b)(4) plus any  
12 funds remaining from the qualifying period and possible rescue funds.  
13 In addition, during that period a candidate may accept in-kind  
14 contributions from political party executive committees, up to an  
15 aggregate value of ten percent (10%) of the amount the candidate is  
16 entitled to receive under G.S. 163-278.99(b)(4).

17 (4) During the qualifying period, the candidate may contribute up to one  
18 thousand dollars (\$1,000) of that candidate's own money to the  
19 campaign. Debt incurred by the candidate for a campaign expenditure  
20 shall count toward that limit. During the qualifying period, the  
21 candidate may accept in contributions up to one thousand dollars  
22 (\$1,000) from each member of that candidate's family consisting of  
23 spouse, parent, child, brother, and sister, as long as the candidate  
24 accepts no more than two thousand dollars (\$2,000) from all those  
25 family members combined.

26 (5) A candidate and the candidate's committee shall limit the use of all  
27 revenues permitted by this subsection to expenditures for  
28 campaign-related purposes only related to the upcoming election. The  
29 Board shall publish guidelines outlining permissible campaign-related  
30 expenditures. In establishing those guidelines, the Board shall  
31 differentiate expenditures that reasonably further a candidate's  
32 campaign from expenditures for personal use that would be incurred in  
33 the absence of the candidacy. In establishing the guidelines, the Board  
34 shall review relevant provisions of G.S. 163-278.42(e), the Federal  
35 Election Campaign Act, and rules adopted pursuant to it, and similar  
36 provisions in other states.

37 (6) Any contribution received by a participating or certified candidate that  
38 falls outside that permitted by this subsection shall be returned to the  
39 donor as soon as practicable. Contributions intentionally made,  
40 solicited, or accepted in violation of this Article are subject to civil  
41 penalties as specified in G.S. 163-278.70. The funds involved shall be  
42 forfeited to the Civil Penalty and Forfeiture Fund.

43 (7) A candidate shall return to the Fund any amount distributed for an  
44 election that is unspent and uncommitted at the date of the election, or

1       (a) Reporting by Noncertified Candidates and Independent Expenditure  
2       Entities. –

3       Any noncertified candidate with a certified opponent shall report total income,  
4       expenses, and obligations to the Board by facsimile machine or electronically within 24  
5       hours after the total amount of campaign expenditures or obligations made, or funds  
6       raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as  
7       defined in G.S. 163-278.96(17). Any entity making independent expenditures in support  
8       of or opposition to a certified candidate or in support of a candidate opposing a certified  
9       candidate, or paying for electioneering communications, as defined in G.S. 163-278.80  
10      or G.S. 163-278.90, that refer to one of those candidates, shall report the total funds  
11      received, spent, or obligated for those expenditures or electioneering communications to  
12      the Board by facsimile machine or electronically within 24 hours after the total amount  
13      of expenditures or obligations made, or funds raised or borrowed, for the purpose of  
14      making the independent expenditures or electioneering communications, exceeds three  
15      thousand dollars (\$3,000). After this 24-hour filing, the noncertified candidate or  
16      independent expenditure or electioneering communications entity shall comply with an  
17      expedited reporting schedule by filing additional reports after receiving each additional  
18      amount in excess of one thousand dollars (\$1,000) or after making or obligating to make  
19      each additional expenditure(s) in excess of one thousand dollars (\$1,000). The schedule  
20      and forms for reports required by this subsection shall be made according to procedures  
21      developed by the Board.

22      (b) Reporting by Participating and Certified Candidates. – Notwithstanding other  
23      provisions of law, participating and certified candidates shall report any money  
24      received, including all previously unreported qualifying contributions, all campaign  
25      expenditures, obligations, and related activities to the Board according to procedures  
26      developed by the Board. A certified candidate who ceases to be certified or ceases to be  
27      a candidate or who loses an election shall file a final report with the Board and return  
28      any unspent revenues received from the Fund. In developing these procedures, the  
29      Board shall utilize existing campaign reporting procedures whenever practical.

30      (c) Timely Access to Reports. – The Board shall ensure prompt public access to  
31      the reports received in accordance with this Article. The Board may utilize electronic  
32      means of reporting and storing information.

33      **"§ 163-278.101. Rescue funds.**

34      (a) When Rescue Funds Become Available. – When any report or group of  
35      reports shows that 'funds in opposition to a certified candidate or in support of an  
36      opponent to that candidate' as described in this section, exceed the trigger for rescue  
37      funds as defined in G.S. 163-278.96(17), the Board shall issue immediately to that  
38      certified candidate an additional amount equal to the reported excess within the limits  
39      set forth in this section. 'Funds in opposition to a certified candidate or in support of an  
40      opponent to that candidate' shall be equal to the sum of the following:

- 41           (1) Campaign expenditures or obligations made, or funds raised or  
42           borrowed, whichever is greater, reported by any one uncertified  
43           opponent of a certified candidate. Where a certified candidate has



1 candidate only if both of the following statements are true regarding that candidate:

2       (1) That candidate is opposed in the general election by a certified  
3 candidate as defined in Article 22G of this Chapter.

4       (2) That certified candidate has not received the maximum rescue funds  
5 available under G.S. 163-278.101(c).

6 The recipient of a contribution that apparently violates this subsection has three days  
7 to return the contribution or file a detailed statement with the State Board of Elections  
8 explaining why the contribution does not violate this subsection."

9       **SECTION 4.** The provisions of this act are severable. If any provision of  
10 this act is held invalid by a court of competent jurisdiction, the invalidity does not affect  
11 other provisions of this act that can be given effect without the invalid provision.

12       **SECTION 5.** This act applies to elections for the seats representing two  
13 districts in the House of Representatives and two districts in the Senate selected in  
14 accordance with G.S. 163-278.97A, as enacted by Section 1 of this act in, 2008 and  
15 thereafter. Section 5 of this act becomes effective July 1, 2006. The remainder of this  
16 act is effective when it becomes law.

## LEGISLATIVE PROPOSAL # 9 SUMMARY

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### HOUSE DRAFT 2005-RR-68: Legislative Campaign Pilot

#### BILL ANALYSIS

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<b>Committee:</b>	House Select Committee on Ethics and Governmental Reform	<b>Date:</b>	May 8, 2006
<b>Introduced by:</b>		<b>Summary by:</b>	William R. Gilkeson
<b>Version:</b>	2005-RR-68		Committee Co-Counsel

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**SUMMARY:** *This proposal would establish a pilot program for public financing of campaigns for seats in the General Assembly. The pilot would begin in 2008 and would apply to two Senate seats and two House seats. The four caucus leaders of Senate and House would each select one district in their chamber to be part of the program. The structure of the public funding pilot would be similar to that of the existing Public Campaign Fund, which applies to races for Supreme Court and Court of Appeals. The major source of funding would be an appropriation from the General Assembly. The appropriation section of this draft is left blank.*

**CURRENT LAW:** In 2002 the General Assembly established the Public Campaign Fund for public financing of campaigns of those candidates for Supreme Court and Court of Appeals who voluntarily accepted contribution and expenditure limits that are not applied to all candidates. The Public Campaign Fund is an adaptation of the full-funding model of public campaign funding that was pioneered by Maine and Arizona rather than the older partial-funding models used by other states. Candidates qualify for the program by pledging to abide by the limits and by raising a certain amount in "qualifying contributions," small amounts given by individual voters. The basic public grants from the Fund do not come until after the primary, and with some exceptions the candidates are limited in their spending to the amount of those grants. If a participating candidate is faced with an opponent who spends more than he/she can match, or independent expenditures targeted at him/her beyond what they can spend, the Public Campaign Fund is supposed to come through with "rescue funds" with which to defend themselves. The Public Campaign is being used in judicial elections this year for the second time.

**BILL ANALYSIS:** This bill would establish a pilot program that attempts to adapt the Public Campaign Fund model to public financing of campaigns in four legislative districts.

- Selection of Districts. The pilot program would begin in the 2008 election. It would be conducted in 4 districts, one selected by each of the 4 caucus leaders, the House and Senate majority and minority leaders. They would make their selections from a list of districts where the candidates volunteer to participate. Those caucus leaders would be required to make their selections by August 1 of the year before the election. If a leader did not make a selection by that deadline, the State Board of Elections would be required to pick a district instead. *Section 1 of bill. GS 163-278.97A.*

- Limit on Nonparticipating Candidates. As in the judicial Fund, a nonparticipating candidate with a participating opponent may not receive a contribution within 21 days before the general election if that contribution would cause the candidate to exceed the trigger for rescue funds. *Section 2 of the bill.*
- Source of Funding. The funding for the pilot program would basically be a General Assembly appropriation. The amount is left blank in Section 5 of the bill.

**BACKGROUND:** New Jersey has conducted a similar pilot program for seats in its equivalent of NC's House. The Subcommittee on Campaign Finance heard a report about that program.

*2005-RR-682005-RR-68-SMRR*

## LEGISLATIVE PROPOSAL # 10

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A BILL TO BE ENTITLED  
AN ACT TO PROVIDE FOR A PROCEDURE FOR CHALLENGING THE  
QUALIFICATIONS OF A CANDIDATE.

The General Assembly of North Carolina enacts:

**SECTION 1.** Subchapter V of Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 11B.

"Challenge to a Candidacy.

**"§ 163-127.1. Definitions.**

As used in this Article, the following terms mean:

- (1) Board. – State Board of Elections.
- (2) Candidate. – A person having filed a notice of candidacy under Article 10 of Chapter 163 of the General Statutes or having filed a petition under Article 11 of Chapter 163 of the General Statutes.
- (3) Challenger. – Any qualified voter registered in the same district as the office for which the candidate has filed or petitioned.
- (4) Office. – The elected office for which the candidate has filed or petitioned.

**"§ 163-127.2. When and how a challenge to a candidate may be made.**

(a) When. – A challenge to a candidate may be filed under this Article with the board of elections receiving the notice of the candidacy or petition no later than 10 business days after the candidate has filed a notice of candidacy or petitioned.

(b) How. – The challenge must be made in a verified affidavit by a challenger, based on reasonable suspicion or belief of the facts stated. Grounds for filing a challenge include the candidate does not meet the constitutional or statutory qualifications for the office, including residency.

(c) If Defect Discovered After Deadline, Protest Available. – If a challenger discovers one or more grounds for challenging a candidate after the deadline in subsection (a) of this section, the grounds may be the basis for a protest under G.S. 163-182.9.

**"§ 163-127.3. Panel to conduct the hearing on a challenge.**

(a) Upon filing of a challenge, a panel shall hear the challenge, as follows:

- (1) Single county. – If the district for the office subject to the challenge covers all or part of only one county, the panel shall be the county board of elections of that county.
- (2) Multicounty but less than entire state. – If the district for the office subject to the challenge covers more than one county but less than the entire State, the Board shall appoint a panel within two business days after the challenge is filed. The panel shall consist of at least one member of the county board of elections in each county in the district of the office. The panel shall have an odd number of members, no fewer than three and no more than five. In appointing members to the panel, the Board shall appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the

(e) Rules by Board. – The Board shall adopt rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decisions.

**"§ 163-127.5. Burden of proof.**

(a) No challenge may be sustained by the panel absent clear and convincing evidence of the record as a whole. The burden of proof shall be upon the candidate.

(b) If the challenge is based upon a question of residency, the candidate must show, by clear and convincing evidence, all of the following:

- (1) An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile.
- (2) The acquisition of a new domicile by actual residence at another place.
- (3) The intent of making the newer domicile a permanent domicile.

**"§ 163-127.6. Appeals.**

(a) Appeals From Single- or Multicounty Panel. – The decision of a panel created under G.S. 163-127.3(a)(1) or G.S. 163-127.3(a)(2) may be appealed as of right to the Board by any of the following:

- (1) The challenger.
- (2) A candidate adversely affected by the panel's decision.
- (3) Any other person who participated in the hearing and has a significant interest adversely affected by the panel's decision.

(b) Notice of Appeal. – Appeal must be taken within two business days after the panel files the written decision with the county board of elections in which the candidate filed notice of candidacy or petitioned. The written appeal must be delivered or deposited in the mail to the Board by the end of the second business day after the written decision was filed by the panel. The Board shall prescribe forms for filing appeals from a panel's decision in a challenge. The Board shall base its appellate decision on the whole record of the hearing conducted by the panel and render its opinion on an expedited basis. From the final order or decision by the Board under this subsection, appeal as of right lies directly to the Supreme Court. Appeal shall be filed no later than two business days after the Board files its final order or decision in its office. The appeal shall be in the nature of certiorari. The Supreme Court shall hear the appeal and render a decision on an expedited basis.

(c) Appeals to Superior Court from Statewide Panel. – The decision of a panel created under G.S. 163-127.3(a)(3) may be appealed as of right to the Superior Court of Wake County by any of the following:

- (1) The challenger.
- (2) A candidate adversely affected by the panel's decision.
- (3) Any other person who participated in the hearing and has a significant interest adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel files the written decision. The written appeal must be delivered or deposited in the mail to the Superior Court of Wake County by the end of the second business day after the written decision was filed by the panel. The superior court shall base its appellate decision on the whole record of the hearing conducted by the panel and hear the appeal on an expedited basis. From the final order or decision by the superior court under this subsection, appeal as of right lies directly to the Supreme Court. Appeal shall be filed no later than two business days after the superior court files its final order or